Volume 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JOSEPH C. SPERO, MAGISTRATE JUDGE

SANFORD WADLER,	)
	)
Plaintiff,	)
	)
VS.	) NO. C 15-02356 JCS
	)
BIO-RAD LABORATORIES, INC., Et al.,	)
	) San Francisco, California
Defendants.	)
	Thursday, January 19, 2017

TRANSCRIPT OF PROCEEDINGS

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P R O C E E D I N G S

(The following proceedings were held outside of the presence of the Jury)

THE COURT: Remain seated.

THE CLERK: Remain seated. The Court will come to order.

THE COURT: Hello, everyone.

(Counsel greet the Court)

THE COURT: So let's deal with the defendants' desire to cross-examine, I guess, on the internet search history.

MR. POTTER: Thank you, Your Honor.

THE COURT: Yes. So I got a memo; maybe I can get a response from the plaintiff on that.

MR. POTTER: Okay.

MR. NABITY: Yes, Your Honor. The defendant cited three cases in their memo last night. Two of them, if you just do the Control-F function and search for the word "hearsay" --

THE COURT: No, I'm not talking about that question.

MR. NABITY: I'm sorry.

THE COURT: I'm not going to address that yet, the admissibility of that document just yet. Because the cross examination I don't think is affected by that.

MR. NABITY: Sure.

THE COURT: It is affected by the question of whether or not they can get into the plaintiff's search history where he searched for "whistleblower" or "employment lawyers."

MR. NABITY: Right.

THE COURT: So, that question.

MR. NABITY: Yes. No door was opened yesterday by Mr. Wadler's testimony. And I think that if you go back to the transcript and Your Honor's comments and back and forth with Mr. Asperger, it is very clear that this was a consideration at the time, this was a consideration that we briefed in our motion in limine. And essentially what defendants are trying to do is to use inadmissible evidence to counter admissible evidence. And that is not permitted. There is just simply no basis for that.

THE COURT: Okay, that makes no sense to me. So you are going to have say something that actually explains to me why. Because here is my view: My preliminary view is Mr. Wadler got up there and testified that until the moment that he was told he was fired, he had no inkling that he was anything other than in good standing, and that his last review was spectacular, best one he had ever had. And so it was a total shock. May very well have been. I'm not saying it wasn't a total shock, but he testified it was a total shock.

The defense that was not raised during the motion in limine, and so the question is whether or not in light of his testimony, they want to say: No, this wasn't a total shock. You are actually -- it is not credible it was a total shock. You were searching for your own whistleblower or employment lawyer.

Go ahead.

MR. WAGSTAFFE: Your Honor, I don't think there is a foundation for that in the evidence. Second of all --

THE COURT: Foundation for what?

MR. WAGSTAFFE: I'm sorry, Your Honor, I didn't hear you.

THE COURT: A foundation for what?

MR. WAGSTAFFE: I'm sorry Your Honor, I have some water in my ear.

THE COURT: Yes, a foundation for what?

MR. WAGSTAFFE: There is no foundation that he was doing so because he thought he was going to be fired.

THE COURT: Well, he was going to ask. They're going to ask: Is some evidence that he was searching -- there are lots of references, as I said in the motion in limine, for why he might search for a lawyer. Some of them benign, some of them not so benign. But in any event, all of them appear to be now inconsistent with his testimony.

MR. WAGSTAFFE: Your Honor, first of all, as Your Honor said at the time we heard that being a whistleblower lawyer, Mr. Axelrod is a full-service lawyer who also does employment law. To suggest -- and then what, do we do? Do we bring in Mr. Axelrod to testify? Because, Your Honor --

THE COURT: No, no, you're misunderstanding me.

MR. WAGSTAFFE: I'm having trouble hearing you, Your Honor.

THE COURT: I'm sorry. I'll try to lean into the microphone. And that in combination with my tendency to mumble is a bad combination.

MR. WAGSTAFFE: Me, too.

THE COURT: So, and -- if I spoke as quickly as you, we would all be in trouble then.

MR. WAGSTAFFE: Touché.

THE COURT: Yes. Yeah. No, no, no, fine. The inference now is that -- they want to draw, as I understand it, is that at least Mr. Wadler was not telling the truth when he said he was shocked. Because he had been out consulting with employment lawyers.

MR. WAGSTAFFE: Consulting, Your Honor; now we get into attorney/client privilege which --

THE COURT: No, no, just search. They're just do I know the internet search. They're going say: We're totally shocked. You were searching for employment lawyers. Weren't you actually worried about -- that you were going to be fired?

MR. WAGSTAFFE: Well, Your Honor, first of all they have to lay the foundation that they are employment lawyers, and how they're going to do that. Second of all, I think it raises right to what we said -- if I may?

THE COURT: Yeah.

MR. WAGSTAFFE: 403, because it leads to then: Did he find one, did he go talk to one, what did they talk about, what did that lawyer do?

THE COURT: Maybe.

MR. WAGSTAFFE: Well, that's the problem, Your Honor. Because for me to rebut that as to what he did and didn't do, I may have to go -- and Your Honor, it's like the resume. The resume comes in, and the jury says: Why is he doing his resume? And I understand that came into evidence, but that's why 403 exists, is to prevent the drawing of inferences that we cannot rebut because of privilege and similar issues.

THE COURT: Maybe. But I guess the question is how far they intend to go. If they tend to want to say: You were consulting with an employment lawyer, right? Or you -- you were searching for an employment lawyer. That's -- isn't that right?

Yes.

Why were you searching for an employment lawyer?

And he answers that question. He can answer that question. That's not a privilege question.

And they try to say that that's inconsistent with his stated position on whether or not he felt like his job wasn't in jeopardy.

It doesn't seem to me, depending on how far -- if they're going to go further than that, it seems to me a little bit of a problem. But --

MR. WAGSTAFFE: Your Honor, if you wanted to go to the SEC to talk to this lawyer to get advice, but it leads to the seeking --

THE COURT: No. Give me a benign reason that is consistent with what he's testified to, for him seeking out lawyers that are -- seeking out, searching for lawyers, doing internet searches for whistleblower lawyers or employment lawyers.

MR. WAGSTAFFE: If he's asked the question was he looking for whistleblower lawyers, he'll say no. But the problem is --

THE COURT: But we know the search that he did.

MR. WAGSTAFFE: Now, do we have Mister -- and now do we also have to have testimony -- now I also have 403 on cumulative, as Your Honor also ruled upon. Do we have to put on evidence as to who Mr. Axelrod is? What kind of practice he does? Did he actually speak with him?

THE COURT: So, give me -- just assume the basics. Assume that they can ask the question: Did you search for an employment lawyer in advance of your firing?

MR. WAGSTAFFE: Okay.

THE COURT: The answer is yes. I assume the answer is yes. There's an internet search done, so he must have done something.

What is the benign explanation for that that is consistent with his testimony?

MR. WAGSTAFFE: Your Honor, I haven't had a chance to talk to my client about it. If you could give me 30 seconds, perhaps I could do that. Could I have 30 seconds?

THE COURT: Yeah. Let me just pin this down a little bit from the other side before you do, so I'll know what your question is about.

How far are you going to go with this? What do you want to ask?

MR. POTTER: Well, I just want to establish that -- I mean, along the lines of what the Court is laying out. The suggestion was that he was terminated; it came out of the blue as a complete shock to him. That was the thread of the testimony.

And what we elicit was: It wasn't such a shock. In fact, he had been searching the internet and conferring with internet -- employment and whistleblower lawyers before the termination.

THE COURT: So you said it in a particular way. "Employment and whistleblower lawyers." I guess my concern at the time we did the motion in limine was we were going to get too far into whether or not the consultation with the particular lawyer that he was looking for, what he was looking for, was for offensive or defensive purposes. Because you wanted to use this evidence to show, and I rejected using it to show that there was -- that this was a setup.

The only reason I'm reconsidering is because of his testimony that he was totally shocked, that you might have some piece of this that is maybe admissible to show that: No, he wasn't totally shocked.

So it is -- how are you going to do this? You're going to ask him the question. If you ask him the question: Did you consult with whistleblower lawyers, I think I've got an issue with that, still.

If you ask him the question: Did you consult -- did you do an internet search for employment lawyers?

Yes.

You did that because you were worried about your job, right?

No.

And then, gives some explanation to the contrary, or whatever it is. That's a different line of questioning than the one that goes down the path towards a setup, which I was worried about last time.

So given my views on that, what's your -- can you carve it -- is your intention to carve it so it's just employment lawyer in response to the assertion that he didn't feel his job was in jeopardy? Or do you plan on going further than that?

MR. POTTER: Well, Your Honor, in the interest of detail, the employment lawyer that he is interested in consulting with is a whistleblower lawyer.

THE COURT: Well, "in the interest of detail" is not an interest that I recognize.

MR. POTTER: Well, but, but if you want an accurate -- if you want an accurate depiction of the facts, the facts are he wasn't consulting with an employment lawyer because he is an African-American. The evidence is that he was consulting with an employment lawyer because of the fact that he was raising the issues that were ultimately in the FCPA memo.

THE COURT: Okay, so we're in the same place, if you're going down that road. That is to say: I'm not going to change my ruling under 403 if you go down that road.

If you want to do something extremely narrow, which is just to say: Contrary -- to send the message: Contrary to his stated state of mind, he was, in fact, worried about his job, which you will use as -- to support your conclusion that when these others are saying they warned him about his job they were telling him the truth, that I have less of a problem with.

MR. POTTER: Well, we will, of course, abide by the Court's ruling. There's one other element.

THE COURT: I haven't ruled yet.

MR. POTTER: Well, but Your Honor, there is one other element just for the Court's edification. There was another part of the testimony where Mr. Wadler explained his absence of employment records because he didn't know to keep them.

THE COURT: Uh-huh.

MR. POTTER: Okay. He's represented by an employment lawyer at that time. I don't think it's credible for him to assert that he didn't know to maintain job applications.

This is where he claims he went to the public library to send in applications.

THE COURT: Well, it's all about time. It's all about -- that gets into the details of representation, though.

MR. POTTER: And on that square, Your Honor, I'm not going to go into whistleblower or anything of the sort. But I think it is fair to say that: At that point in time you were represented by counsel.

It's just not credible to say: I didn't maintain records of my job efforts because -- the inference is because: I was in the dark, it didn't matter. He was represented by very able employment counsel at the time. And it's just not a credible assertion. It's not true.

THE COURT: Well, I don't know if it's a credible assertion. It gets into attorney/client privilege so I'm not actually persuaded by that. Because that depends on exactly the contents of the conversations. And I'm not going to put him in a position of having to defend by -- by waiving the attorney/client privilege on that thin inference. Because actually, it's a pretty thin inference.

I mean, it's no -- it's no less than saying: Well, you're general counsel; you've done employment before. You knew you were supposed to keep records.

There's any number of ways of doing it, not to get ahead of you. But --

MR. WAGSTAFFE: Yes, Your Honor. I think the concern the Court was expressing under 403 when we were before on this issue, may I say, is that the thread from the sweater that gets pulled and we get into other issues that either both go to privilege or take time or mislead.

There is a credible explanation, which is he's not going to talk about getting fired. He needs advice because the management -- because the management didn't respond to his concerns. Not because he was afraid of getting fired. Because they weren't responding to his concerns. You go to lawyers for lots of reasons. Not necessarily because you think you're getting fired.

Now, if he has to answer that question, then I'd open the door as to what he was doing and what he was potentially going to talk about.

Then, who's Mr. Axelrod? Who are these lawyers? He wants to say they're employment lawyers. Now we've got to put on Mr. Axelrod to say he has all sorts of --

THE COURT: Well, I can cut it off at some point. Why can't I cut it off at some point, and say that at that point we're really getting into a serious waste of the jury's time in a mini-trial.

So you -- he says: You consulted with an employment lawyer.

His response is: I consulted with an employment lawyer because I wanted to know what I was supposed to do when I wasn't getting an response.

MR. WAGSTAFFE: Now I have to put on evidence that Mr. Axelrod does things other than employment.

THE COURT: It's -- why do you have do that?

MR. WAGSTAFFE: Because he is not just an employment lawyer, Your Honor.

THE COURT: No, I understand that. But why do you have to do that?

MR. WAGSTAFFE: Because the inference they are going to draw is he was con- -- he just said they're going to ask the question: You were trying to consult an employment lawyer.

And now I'm going to put Mr. Axelrod on the stand to say there's lots of things he does as a lawyer.

THE COURT: Well, you redirect, and you say: Mr. Axelrod does more things than just to defend employment lawsuits. Right? What else does he do?

MR. WAGSTAFFE: And now the jury thinks he may have seen Mr. Axelrod. And now the jury thinks --

THE COURT: He did see Mr. Axelrod.

MR. WAGSTAFFE: I understand that. That's what's not permitted, is to go into what he talked to Mr. Axelrod about.

THE COURT: No, no, no. We're not going to talk about what he said to Mr. Axelrod or what Mr. Axelrod said to him. We're just on the subject of why -- whether he consulted with a lawyer, and why he consulted with a lawyer.

MR. WAGSTAFFE: The whether, Your Honor, goes to: Then what did he talk about when he got there, and what did he say when he tried to talk? The privilege attaches not when you get -- when you retain them, but attaches the moment you communicate with them.

THE COURT: But it's only the communications. It's not the why.

MR. WAGSTAFFE: Exactly. But the inference -- the thread of the sweater is that he was looking for a lawyer, did he go find a lawyer? These jurors look, and they say: Did he ever have an employment lawyer? Did he have a lawyer right then? Did he actually hire that lawyer?

THE COURT: None of which is privileged.

MR. WAGSTAFFE: It is prejudiced if he did do it, Your Honor.

THE COURT: No, it's not.

MR. WAGSTAFFE: Hold on. I didn't finish my sentence. If I might go on?

THE COURT: Yeah.

MR. WAGSTAFFE: If he did do it, and he went and talked to that lawyer, and what he talked about.

THE COURT: What -- no, no. None of that, other than the last thing you said, is privileged. What he talked about.

MR. WAGSTAFFE: Because -- I agree, Your Honor.

THE COURT: And plus, we are talking about prejudice. You want to say that he consulted with -- now, it's kind of an entertaining flip here. You want to say he consulted with a lawyer who's an expert in whistleblower's obligations under Dodd-Frank or whatever. Because you want to say he wanted to know what his obligation -- what he had to do. And he wasn't getting a response from people. Or you wanted to say -- or maybe you don't. Maybe you want to say he's an employment lawyer. He advises people what to do in their employment situations. Maybe it's not in reference to whistleblowers. And in employment situations when you have a problem, you don't know what to do, you'd best talk to a lawyer. And he wanted to do that.

And he'll say that. And he will describe what Mister -- Axelrod? Axelrod does, that he does that sort of thing. Why can't I stop it there?

MR. WAGSTAFFE: I don't know -- for me to go into that, Your Honor, raises all sorts of questions for the jury about the -- what he talked to Mr. Axelrod about when he eventually saw him.

The implication -- the reason they want this question is because they want to say: Not only did he try to consult a lawyer, but they want to say the reasons why. What was in his mind.

THE COURT: Yeah.

MR. WAGSTAFFE: And if they disagree with what he says, they're going to say: Well, isn't Mr. Axelrod this kind of lawyer, and weren't you really looking for a lawyer like this?

And I think we pull the thread from the sweater.

THE COURT: Well, let's be very specific about what you're talking about. So, so far I've said the possibility is that

Mr. Potter can ask the question about whether or not he consulted with a lawyer. And he can ask the question about: Didn't you consult with this lawyer because you were worried about your job?

MR. WAGSTAFFE: Consult with, Your Honor? Or --

THE COURT: Look for.

MR. WAGSTAFFE: That's quite different.

THE COURT: They're different, but I think they're fine.

MR. WAGSTAFFE: "Consult" means you talk with him.

THE COURT: Looked for a lawyer, without -- with -- let's take it a step at time. Looked for a lawyer because you were worried about your job.

And he can say in response, and he'll say, if you say what you said, that: I was looking for a lawyer because I wasn't getting a response from Mr. Schwartz, and I needed to know what to do next.

MR. WAGSTAFFE: And if he says "No" to that question, Your Honor?

THE COURT: If he says what?

MR. WAGSTAFFE: If he says "No" to the question --

THE COURT: "No" to what?

MR. WAGSTAFFE: If he says "No" to the question: No, I wasn't looking for a lawyer to consult for employment.

Then what happens?

THE COURT: Then that's the end --

MR. WAGSTAFFE: What's the next question?

THE COURT: Maybe that's the end of the inquiry. Maybe I just leave it at that.

MR. WAGSTAFFE: Now do they show him the emails and say --

THE COURT: They show him the emails saying: You did actually consult with a lawyer.

MR. WAGSTAFFE: Not consult, Your Honor. If I may, "consult with a lawyer" means that he talked with a lawyer.

(Reporter interruption)

MR. WAGSTAFFE: Your Honor, I -- the "consult" means that he talked to that lawyer. So, if the question is: Did you --

THE COURT: Okay. Limit it to looked for.

MR. WAGSTAFFE: Looked for.

THE COURT: So they -- they say: Well, you did an internet search -- because this is about internet searches -- for employment lawyers. Didn't you?

Yes, I did.

And you did that because you were afraid that your job was in jeopardy?

No, I didn't.

So he either then, or on redirect, probably on redirect: Why did you look for an employment lawyer?

MR. WAGSTAFFE: Your Honor, the *Goldberg* case we cited, which I thought Your Honor was finding persuasive, says that courts do recognize the potential prejudice that exists even by permitting questions that would draw a privilege objection.

And in particular, so now I -- first of all, if I say no, he says no, right, and I don't go back to it, what's the followup question?

He shows him -- he shows him the -- the -- presumably the email searches, right? Or --

THE COURT: The internet search.

MR. WAGSTAFFE: Internet searches.

THE COURT: I would have to look at the document and see what it says, but yeah.

MR. WAGSTAFFE: And then he starts asking questions with our thread about: What kind of lawyers were they?

THE COURT: Yeah.

MR. WAGSTAFFE: And he says: No. I don't know.

Let's assume that. Now we've to put in evidence that says what kinds of lawyers they are. And which ones -- what kinds he was looking for.

THE COURT: Is there any dispute that these are employment lawyers?

MR. WAGSTAFFE: I think there is, Your Honor. Mr. Axelrod -- I mean, I don't have the list in front of me, Your Honor.

THE COURT: So, I'm not accepting that. I want a representation right now. Is there any genuine dispute that the search that we're talking about was for employment lawyers?

MR. WAGSTAFFE: Well, Your Honor, may I have one moment, please?

THE COURT: Yeah.

(Off-the-Record discussion between Counsel)

MR. WAGSTAFFE: I'm not able to make that representation.

MR. POTTER: Hm.

MR. WAGSTAFFE: Your Honor, this is not funny. Your Honor, I don't appreciate someone laughing at me.

THE COURT: So, listen. I don't appreciate anybody -- I don't like the laughing. I don't like your smirking and shaking your head.

MR. WAGSTAFFE: Thank you, Your Honor.

THE COURT: You're both doing things that are inappropriate. Enough said on that subject.

So, the representation, I don't know what you mean by that.

MR. WAGSTAFFE: What I mean --

THE COURT: Is there any dispute -- and I need to know whether there is a dispute -- that the internet searches were for employment lawyers?

MR. WAGSTAFFE: I'm not disputing that.

THE COURT: Fine. So, he says, he answers that: Yes, I was searching for an employment lawyer.

And then you get the cross-examination question about the motivation, saying: Did you do that -- you did that because you thought your job was in jeopardy.

And he says: No.

And then either that question or the next question, or on redirect, he says: Why did you do that?

I did that because I was not getting a response, and I needed to know what to do. So that's why I searched for an employment lawyer.

Why can't you go that far?

MR. WAGSTAFFE: Because of the case law that says that the next question the jury will be asking in their mind is: Did he consult. And the moment we get to did he consult, we open the door to now the jury will be concerned about what he --

THE COURT: Maybe I don't allow did he consult.

MR. WAGSTAFFE: I know. But even if you don't, Your Honor, that's the next question the jury will ask, because we raised the subject

THE COURT: But you've done it in such a benign way, I don't see why that's damaging.

MR. WAGSTAFFE: Well, I -- I just think -- I think this is so important to them, because they know that what the jury's going to think is he's going online to look for employment lawyers. He found one. And he talked to one.

THE COURT: Yeah.

MR. WAGSTAFFE: I'm not going to say a word about what he did in consulting with a lawyer.

THE COURT: You've already said why he was looking for it. I don't know what the problem is.

MR. WAGSTAFFE: Because if you then -- the point is that they will then -- it will then, as the *Goldberg* case suggests, lead the jury to wonder: What -- did he? And if so, on what subjects? And what did they talk about? Implying that maybe he had a lawyer at that time with respect to what they talked about.

And I'm worried about the unraveling towards the privilege that -- which is exactly what 403 is all about. At which point then do I, as Your Honor said we would argue this, do I then put Mr. Axelrod on the stand to talk about the breadth of his practice?

And I think that's the concern I have, is that this jury is going to wonder, because of the questions, as to what the next question is. And none of us are going to be talking about it, because it's privileged.

And the case law talks about -- I call it the thread of the sweater, but the case law talks about if you ask questions that lead right up to a privileged situation where the jury will reasonably wonder what they consulted about, the fact that you were looking for a lawyer, and then I don't talk -- we don't say one word about what happened from those emails, is the possibility that the jury will then -- and that's what prejudice is. And I'm not going to be asking any question, I'm not going to ask him any questions, I'm --

THE COURT: That's not what prejudice is. Prejudice is actually a negative inference.

MR. WAGSTAFFE: Yes, Your Honor. I believe the negative inference that will be drawn is that I'm not now telling the jury what he did after he went on the computer. Did he talk to a lawyer? And if so, on what subject? I'm not going to talk about it, which leads the jury to conclude that I'm not talking about it because of something that he said to the lawyer.

THE COURT: Hm.

MR. WAGSTAFFE: And that's exactly what the privilege is designed to protect. Which is why, in my mind, 403 in particular applies here.

MR. POTTER: Your Honor, this is a problem of Mr. Wadler's making. We're having this very extended and passionate discussion about how we are going to sanitize the record, in a way, to, admittedly, prevent the jury from getting facts surrounding this issue.

THE COURT: That is what the rules of evidence are for.

MR. POTTER: Well, it is, until a plaintiff gets up and says: This was a complete shock to me, that I was terminated.

And the evidence shows that that testimony just isn't credible, in light of other actions taken by the plaintiff. And I think that we should have the opportunity to establish that he conducted an internet search for an employment lawyer, and retained the employment lawyer. And, and if the Court is inclined to limit the inquiry to those issues and have us not pick up the whistleblower aspect of it, obviously we'll abide by that. But I think, at a bare minimum, we should be able to make those points.

And I hasten to add, Your Honor, that the lawyer that he consulted with was ultimately the lawyer who represented him in the OSHA proceeding. So I think it's --

THE COURT: That makes it more problematic, not less problematic. So I'm not sure that's a fact that augurs in favor of letting it in.

MR. POTTER: Consider the fact withdrawn, Your Honor.

THE COURT: Yes.

MR. POTTER: So, so --

MR. WAGSTAFFE: Your Honor --

MS. KRAMER: But I would ask, Your Honor, just a very streamlined presentation along the lines that I have proposed to the Court, namely simply the fact that he searched for internet -- the internet for employment lawyers, and retained one.

And I think with this particular plaintiff, I think that stopping on the -- at the internet search removes a critical fact, because based upon the testimony we have heard at least yesterday, I think that there's going to potentially be some sort of suggestion, implied or otherwise, it was merely a search of the internet, when we all know it went beyond that. There was an actual retention. Which again connotes a concern about one's employment status.

And that fact is inconsistent with his testimony yesterday that this came out of the blue to him, he had no idea, et cetera. If you are doing an internet search for an employment lawyer and you are hiring an employment lawyer, it's not going to be a concern -- it's not going to come out of the blue. You are already aware of the fact.

THE COURT: Maybe, maybe not. Okay. So I'm -- I'm -- go ahead.

MR. WAGSTAFFE: Your Honor, just to say, now you see what I was worried about.

THE COURT: No --

MR. WAGSTAFFE: Now, retention --

THE COURT: No, I'm not going to allow retention in. What I'm thinking about doing just so you get the opportunity to respond to it is to allow the questions about: Didn't you conduct on such and such a date an internet search for an employment lawyer?

The answer will be yes. If it's no, then they are going to refresh his recollection with showing him this stuff.

And then, there will be the question, the cross-examination question: You did that because you were worried about your job?

Answer: No.

You or counsel: Why did you do that?

I did that because I was concerned about, you know, I was not getting a response and I needed to know what to do. And that's why I consulted with a lawyer.

MR. WAGSTAFFE: I'm not going to say that, Your Honor, I'm not going to consultation.

THE COURT: I'm sorry: That's why I searched for.

MR. WAGSTAFFE: Okay.

THE COURT: My mistake. Searched for a lawyer. Because it's the search, itself, is what is principally -- purportedly inconsistent with what was said on the stand yesterday. So I'm inclined to let the search in.

And we will call it an employment lawyer, nothing else, because that covers the waterfront. It's accurate. But not let in the retention or, of course, anything that happened thereafter with that lawyer.

So, that's what I'm thinking of doing, if you want to respond to that.

MR. WAGSTAFFE: I won't repeat what I have already said, Your Honor. I'm concerned that that is getting right up to the water, and the jury is going to be asked: Why are we not drinking it? And that drinking is the privilege.

And in particular, the jury will say: Okay, did he consult? Why are we not hearing that? What did he consult about? Did he do it then or three months later?

It opens the door to the jury asking questions about inferences that arise more than what they want to demonstrate.

As you clearly know what they're arguing here, they want to get to retention, they want to talk about lawyers. Lawyers give advice about, you know, how you look for jobs. All the things that are privileged.

And all of those inferences they just made is what the jury will be thinking if we open up this limited door. And I'm very concerned, for the reasons Your Honor said last time, that 403 is designed for this situation. Particularly when what's on the other side of the door is attorney/client privilege information.

MR. POTTER: And Your Honor, if I could just make one brief final comment on this?

THE COURT: Okay.

MR. POTTER: The brief final comment, Your Honor, is this: I just ask the Court to consider this proposition. We have a concern that merely introducing the fact that he did the internet searches for the employment lawyers creates kind of a misleading record.

Because the inference could be from that fact that nothing happened thereafter, that he didn't actually retain an employment lawyer. And that, in a way, could cut against us. The mere fact that he searched but didn't go ahead and retain an employment lawyer is something that could -- says he didn't really have any employment concerns. And it also lends to the inference or supposition that he was reaching (sic) it for a cousin, a friend, or somebody else.

So I think that by not giving us the opportunity --

THE COURT: Well, you can ask him whether he was searching for an employment lawyer for himself. So I'm not worried about the second part. The first part is true..

MR. POTTER: There still is that gap. Even if he says: Yes, I was searching for an employment lawyer for myself, if there's nothing in the record to complete the picture, to use the plaintiff's analogy of a jigsaw puzzle, we are missing a piece.

MR. WAGSTAFFE: Your Honor --

THE COURT: Somebody is going to be missing a piece at the end of this discussion.

MR. WAGSTAFFE: Your Honor, my concern is the piece they are missing are exactly what are excluded. And the jury could worry. Trust me, they're going to ask the question. I don't believe they're really worried about that inference. They want the inference that he consulted, that he got advice, and what he got that advice for.

That is exactly why I'm concerned about this very limited use. I understand the concern raised. But that's what the jury is going to be thinking.

THE COURT: Okay. Thank you. It's a close question. But I'm going to allow two, in substance, cross-examination questions.

The first: Did you do, and when did you do an internet search for an employment lawyer for yourself? And I'm not phrasing the questions for you, but that's the subject.

MR. POTTER: Uh-huh.

THE COURT: And second: Why did you do an internet search for an employment lawyer?

I won't allow any questions that say anything about it being -- from the defense, I won't allow any questions about it being a whistleblower lawyer.

And I won't allow any questions about retention or consultation or anything like that, because I think, under 403, we are getting into serious risk both of prejudice because of the attorney/client privilege, and just doing a day on whether or not -- that's a waste of time -- what the consultation was about, et cetera, et cetera.

So that's my ruling. So, confine it to that.

In terms of documents, what does that mean?

MR. POTTER: Well, at least at this juncture, I think our intention, and -- can I have one minute, Your Honor?

THE COURT: Sure.

MR. POTTER: I mean, I think my intention is just to ask the questions. But can I confer with my counsel?

THE COURT: Yeah, yeah.

(Off-the-Record discussion between counsel)

MR. POTTER: Unless the witness needs a document to refresh his recollection, which I doubt, we don't intend to use documents, Your Honor.

THE COURT: Okay.

MR. POTTER: And I guess, Your Honor, we would obviously reserve the right if --

THE COURT: Well, if they open the door, they open the door.

MR. POTTER: Right --

THE COURT: But --

MR. POTTER: Or if there's testimony we believe is untruthful, we would obviously revisit. But we're not looking to use documents directly.

THE COURT: Well, okay.

MR. WAGSTAFFE: Your Honor?

THE COURT: No documents without talking to me. Let's say that.

MR. POTTER: Of course, okay.

MR. WAGSTAFFE: Thank Your Honor. I understand Your Honor's ruling.

THE COURT: Yeah.

MR. WAGSTAFFE: May I bring one other short matter up, Your Honor?

THE COURT: Yeah. Let me just write down one thing so I make sure I've my notes correct.

Yes, go ahead.

MR. WAGSTAFFE: Your Honor, this is somewhat of a process question on two fronts.

THE COURT: Uh-huh.

MR. WAGSTAFFE: I appreciate Your Honor's approach when I suggested a limiting instruction. We'll do that. We've submitted it to Your Honor, but we will do that at the appropriate time, Your Honor.

I think we've already given you --

THE COURT: You have given me --

MR. WAGSTAFFE: -- the record. But, Your Honor, that raises an issue. Something happened yesterday, and it's a process for me, in the way to object.

Yesterday, without any warning, in cross-examination of my client, they asked whether they -- whether Mr. Wadler was aware in the course of the lawyers' interviewing John Cassingham, that they learned that he reviewed those documents and told you that they did not represent bribe payments.

I'm not accusing counsel who may not know the record. We tried to get the notes of that interview, and were thwarted.

THE COURT: Uh-huh.

MR. WAGSTAFFE: We tried to get testimony on that interview, and were thwarted in discovery by privilege and other objections.

THE COURT: Uh-huh.

MR. WAGSTAFFE: I -- because we're not doing sidebars and because I couldn't have anticipated the question, that in my mind is entirely inappropriate. I'm not blaming counsel who may not have known that fact.

But that's inappropriate to ask a witness questions: "Didn't you know about a conversation" that we've had no opportunity to get behind, but to stand up in the middle of cross -- and I appreciate Your Honor's reaction, if I do so, becomes impossible. But to unring the bell after the fact -- my colleagues said: What are we going to do about it? And I said: I'll have to think about it.

But I'm raising the subject because this is coming in rapid fire. I'm part of that problem. Rapid fire. And certainly, if I stand up and interrupt a cross, I understand Your Honor's concern.

But here, I -- to do that after the question is asked and answered is very difficult. And I just want to alert Your Honor -- and by the way, on this one, we will probably seek some remedy, because it's inappropriate to do so. But I want to just alert the Judge to that concern.

THE COURT: Well, I don't know how to respond to that concern. You're saying that there may be a question that's asserted that you think is inappropriate because of a failure to produce information during discovery, or assertion of some bar during discovery. You know, that's the box you're in.

MR. WAGSTAFFE: And I understand, Your Honor. We will bring this to Your Honor's attention formally --

THE COURT: No, I appreciate that. You'll do that, and the next time that happens, you'll have to make a judgment. It's just a judgment about whether you want to stand up and say: I object, and the basis of the objection is this information wasn't appropriately produced in discovery.

And then we'll have to decide whether or not to take a break then, or just pass the subject and do more later, or whatever we're going to do. My guess is it doesn't come up very often. But if it does, it does.

MR. WAGSTAFFE: Thank you, Your Honor.

MR. POTTER: Okay. Thank Your Honor.

THE COURT: Let's get the jury.

(The following proceedings were held in the presence of the Jury)

(Off-the-Record discussion)

(The following proceedings were held in the presence of the Jury)

THE COURT: Good morning, everyone. Thank you for being on time. I'm sorry for the delay. We were dealing with some important evidentiary questions. And we will proceed where we left off yesterday.

If Mr. Wadler would resume the stand.

MR. WAGSTAFFE: Your Honor, Your Honor, I know -- I hope you will forgive me. My client just told me -- I hope you will appreciate who he is -- he needs to go the bathroom.

THE COURT: Oh, all right. Well, this is -- this is unfortunate timing, but we are going to take a three-minute break. So you can stand in place. Nobody has to go back to -- we'll just be in recess right in the courtroom.

(A pause in the proceedings)

THE COURT: Let's proceed.

MR. POTTER: Thank you, Your Honor.

SANFORD S. WADLER, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

CROSS-EXAMINATION RESUMED

BY MR. POTTER

Q Mr. Wadler, could you refer to Exhibit 7, please.

A Sure.

(Document displayed)

A Yes.

Q This is your report to the Audit Committee, right?

A Uh-huh.

Q And in this memo, you accused Bio-Rad senior management of being aware of FCPA violations. Correct?

A Yes. Well, to potential --

(Reporter interruption)

A I'm asking for an investigation to FCPA issues.

Q Right. And the reason you are asking for an investigation into FCPA issues is because you state in the memo that Bio-Rad senior management is aware, in your opinion, in your conclusion, of FCPA violations. Right?

A Yes.

Q You go on to say in the memo, quote (As read):

"*The only conclusion I can draw from this limited collection of documents is that these practices are endemic and that high levels of management within the company had to know they were happening.*"

You made that statement, correct?

A Correct.

Q And you understood that this was a very serious accusation, correct?

A Certainly. These are serious issues.

Q And that is why, in fact, you even for good measure put that statement in italics to emphasize the importance of the accusation. Correct?

A The importance of the issues and that we needed to investigate it immediately. Yes.

Q And in particular, though, you put in italics the fact that senior management has awareness of these FCPA violations. Correct?

A Yes.

Q Now, in that statement to the Audit Committee, you don't identify any specific members of senior management who have knowledge of this criminal activity, do you?

A I think you are miss -- or you are -- I don't know if you are mixing terms here. The memo talks about the high levels of management. You are talking now about senior. Are you making a

distinction or lumping it in?
Q It's your memo, Mr. Wadler. I'm happy to use your terms. In your memo you don't identify any specific members of high levels of management that have awareness of FCPA violations, correct?
A Right.
Q And you certainly didn't provide any evidence linking any particular member of high levels of management to FCPA violations, do you?
A When I talked to the Audit Committee, I did.
Q In this memo you don't identify anyone, do you?
A No, not in the memo, but my testimony when I talked to the Audit Committee, we told them about the undercovers. We told them that we had talked to the controller in China. We told them that we had talked to the manager of the China operation. I would consider these high-level people. I think anybody in the company would have.
Q You didn't specifically name any individual in any of those discussions, did you?
A Yes.
Q Who did you name?
A The controller and the manager of China.
Q Is the controller or the manager of China listed in that memorandum (Indicating)?
A No.

Q And you were actually aware of the fact that Martine Beamon was representing the Audit Committee. Correct?
A At what time?
Q In February of 2013.
A No. That's why I sent -- I believe you have the email transcript. That became a question for me. That very point became a question. And that's why I said Martine: You have kept me so much in the dark, I don't even know if the Audit Committee has hired you.
And then I believe the email trail will show that it isn't until the end of March, the last day in March, that she sends me a memo that shows that the Audit Committee hired them March 31st.
Q Yeah.
A So I have been talking to her before, and she wasn't even hired by the Audit Committee? And she's representing to me that she was?
Q You spoke to Ms. Beamon on February 12th on a telephone call. Right?
A I'll take your word for it. I don't know the dates in detail.
Q You didn't identify any member of senior or a high level of management involved in FCPA violations in that call, did you?
A I can't remember. I believe that I even told them about high-level people when I met with them in New York.

Q Well, you met with them on February 14th, correct?
A I don't know the date, but I'll take your word for it.
Q And during that meeting on February 14th, you did not identify any member of -- high level of management who was involved with FCPA violations, correct?
A They did not ask me for names. I identified, I said they're high-level people that were involved in this.
Q You didn't ask them names because you aren't being proactive in providing that information?
A No, I didn't name them because they took the conversation in a completely different direction. What they started to be concerned about is: You know, look, you can't tell anybody that we have been hired, you know, the auditors are going to leave. And that's the last thing the company wants.
That switch is what surprised me the most when we began our discussions. That they didn't start ask me for the very details that you're concerned about.
Q Mr. Wadler, would it be fair to characterize you as to be a fairly talkative fellow?
A Nobody's ever characterized me like that.
Q Well, in the course of this meeting, did you have the opportunity to identify to the Davis, Polk law firm the specific individuals who were supposedly involved in this FCPA problem?
A If they had asked me. I gave them my business card, I said: You can call me at night at home; you can call me on the

weekends.

I was expecting barrages of calls with them. I was expecting that I would get endless memos requesting the very questions that you are giving me now. And I was stunned when I didn't get any of that.

Q Do you agree with me, Mr. Wadler, that nothing, nothing prohibited you from specifically telling them at that meeting the individuals in management who had awareness of these FCPA problems?

A The only thing that prohibited me is they didn't ask. And I was following their directions on what the subject should be.

Q Do you have an ability to volunteer information without being asked?

A Of course.

Q And in fact, in that memo (Indicating), you volunteered information without being asked, didn't you?

A You know, I tried to skirt the situation we were in. It wasn't a question of volunteering information. I was going to these people, trying to get some help to get an investigation. To have them go down and look for some documents. What happened to the documents that we haven't had for two years?

I told them that I had gone to my boss. I told them about these documents. And he said: I know.

And they said: Well, what else did he do? Did he ask for an investigation or anything?

No.

Did he ask to do any auditing?

No.

THE COURT: Let's wait for a question, Mr. Wadler.

BY MR. POTTER

Q Do you want to withdraw your testimony that you are not talkative by nature?

MR. WAGSTAFFE: Your Honor, that's argumentative.

THE COURT: Sustained.

BY MR. POTTER

Q But you recognize, though, there was nothing prohibiting you from volunteering information from Davis, Polk during that meeting on February 14th. Correct?

A No. Which is why I gave them my business card. I gave them my home number. I told them they could call me nights, weekends. Whatever it took to get this matter settled, I was at their disposal.

And, and they could have sent me memos for any information that they wanted to follow up in that memo.

Q Davis, Polk took you up on that offer, didn't they?

A Not exactly. What they --

Q How about this: Didn't they come out to see you in Hercules, California, April 30th?

A Yes, they did.

Q And they interviewed you on that occasion, correct?

A Not really.

Q What did they do on that occasion?

A Well, it was an interesting meeting. You know, I had expected at this point to be told what was going on. I had sent them a whole list of -- they asked me, you know: What do we need to investigate? I had sent them a whole list of issues to investigate.

I expected that they would update me on those issues, what was going on. Instead, they stonewalled me. They asked me basically to repeat what I had told them. And I even said: I'm being stonewalled. Why can't I get any information?

Q When you met with them, it wasn't a social meeting, right?

A No.

Q Ms. Beamon wasn't coming out here to see the Golden Gate Bridge; she was coming out here to interview you. Correct?

A No. Bill Riley was there. There were two other associates I believe that they had flown in from New York. So you had four people, and -- and there was no interview. I mean, what I think they were doing, basically, you know, now that I can see in retrospect, is --

THE COURT: Well, let's get a question, please.

THE WITNESS: Okay, sorry.

BY MR. POTTER

Q Did they ask you a series of questions during the meeting, Mr. Wadler?

A Not really. The only question they talked about was just asked me to go back to the Life transaction. And I gave them the information they asked for.

Q You spoke with them during the meeting. You'll give me that, right?

A Yes.

Q And during the meeting, when you spoke with them, you didn't identify or tell them who in high levels of management had knowledge of these FCPA problems, did you?

A Well, that's why I was so, you know, concerned that I was being stonewalled. Investigators should have been asking me questions for the --

THE COURT: So I'm going to have to ask you to actually respond to the question.

THE WITNESS: Sorry.

THE COURT: As I said yesterday, this is not a conversation. So just answer the question that's put to you, please.

THE WITNESS: I'll try, Your Honor, yes.

THE COURT: Do you want to repeat the question?

MR. POTTER: Well, yes.

BY MR. POTTER

Q In your meeting with Davis, Polk, --

A Uh-huh.

Q -- you didn't identify or tell them the high-level management members who had awareness of this FCPA problem, did you?

A No, I wasn't asked.

Q You would agree then, at the end of the day, whether you were asked or not, you never told Davis, Polk, who in senior management had awareness of these FCPA problems (Indicating), did you?

A I believe, through my attorneys, that they were told.

Q Who were your attorneys, Mr. Wadler?

A Um, Jesse Schumaker. Adam Pressman. They were all interviewed by Davis, Polk. Davis, Polk told me they interviewed all these people; they had long interviews that lasted for several hours. And all this information should have been disclosed to them.

Q Mr. Wadler, let's direct our attention to your conduct and your statements.

Do you agree that during your calls and meetings with Davis, Polk, you, the person who raised this issue in the first place (Indicating), never once alleged that senior management had knowledge of FCPA problems. Isn't that true?

A Now, you are doing, between high-level and senior. They were informed -- Davis, Polk was informed of the senior managers in China. They were informed of the contracts. Pat was informed of those contracts. They knew those individuals.

Q You never -- is it fair to say, though, that you never identified to Davis, Polk the identities of the high levels of management within the company that had to know about these FCPA violations?

A I don't remember if I did or not.

Q And if you didn't, the fault lies with Davis, Polk for not specifically asking you. Is that your position?

A No. I assumed that from all the documents we gave, that listed several high-level individuals in China, that they should have been aware of that. And I --

Q Mr. Wadler, after failing to identify high levels of management in your memo (Indicating), and after failing to identify high levels of management with your Davis, Polk interviews and telephone conferences, you changed your tune in this litigation, didn't you?

A No.

Q For the first time in this litigation, after you brought this lawsuit, you identified senior levels of management who apparently or supposedly had knowledge of these bribe payments. Isn't that true?

A We had been supplying documents to Davis, Polk, all along, and to Latham. And -- and those documents identified numerous senior-level people.

Q Well --

A I think it wasn't asked of me, because there just wasn't any question.

Q You testified on direct yesterday for several hours. Right?

A Yes.

Q Can you tell us which document you presented to the jury yesterday showed that senior-level management had awareness of FCPA violations?

A Well, you had several documents. You had one with Giovanni Magni who looked at the distributor agreements and said: This must be a high-level violation of your compliance policy. So he knew.

The people in China made similar comments. So obviously they knew.

Q What about the man you sued, Mr. Schwartz?

A Yes.

Q You never identified to anyone in any of your interviews as part of the FCPA investigation that Mr. Schwartz had any knowledge of payoffs in China. Isn't that true?

A I told them that I had told Norman about the -- the documents that showed bribery, and so I believe he did know.

Q Who did you specifically make that statement to, Mr. Schwartz?

A I'm not Mr. Schwartz.

Q Mr. Wadler. Who did you make that statement to?

A Which statement are you referring to?

Q That Mr. Schwartz had knowledge of bribe payments. Who did you make that statement to?

MR. WAGSTAFFE: Your Honor, misstates the testimony.

THE COURT: Overruled.

THE WITNESS: Um, I believe -- I believe I made it to Pat Norton. I believe I -- I'm sure I made it to Kit Kaufman.

BY MR. POTTER

Q Okay. That is your Audit Committee memo, right?

A Yes.

Q And that is what started this whole thing, right?

A No. I think the activities that were going on in the company is what caused this whole thing.

Q This started the Audit Committee investigation. Right?

A It should have, but it didn't.

Q And you, as a general counsel, knew that you had a fiduciary obligation to provide to the Audit Committee all important information pertaining on that subject matter, didn't you?

A I did. As a matter of fact, to get back to your question --

Q Is the answer to that question yes, you understood that?

A Yes.

Q And you don't identify Mr. Schwartz of having any awareness of bribe payments in that memorandum, do you?

A Not in the memorandum. But in that meeting, one of the things that Albert Hillman said to me was: Norman couldn't have been involved in this.

And I said: I think he may have been.

Q So --

A Thank you for reminding me of that. I specifically referenced that individual. And because I had referenced that individual, that is why Lou Drapeau gave me a travel authorization. Because he knew that I wouldn't get it from Norman.

Q Okay.

MR. POTTER: Your Honor, at this time, I would like to play Page 153, Line 13, to Page 154, Line 5 of the witness's deposition, please.

MR. WAGSTAFFE: Your Honor, I didn't hear that.

THE COURT: It's 153, I missed the line.

MR. POTTER: Yes. I'm sorry, Your Honor. It's Page 153, Line 13, to Page 154, Line 5.

MR. WAGSTAFFE: No objection, Your Honor.

THE COURT: Okay, go ahead.

(Portion of video deposition played, not reported)

BY MR. POTTER

Q That's testimony you gave in this lawsuit. Correct?

A Uh-huh.

Q Is that a yes?

A Yes.

Q And that's testimony that you gave in support of your claims in this case. Correct?

A Yes.

Q And that testimony that you gave is directly contradicted by evidence in this case. Isn't that right?

MR. WAGSTAFFE: Objection, Your Honor. That is argumentative.

THE COURT: Overruled.

MR. WAGSTAFFE: And overbroad.

THE COURT: Overruled.

THE WITNESS: I don't know what you are referring to.

BY MR. POTTER

Q Well, how about your own memo? Doesn't your own memo contradict the sworn testimony that you just gave, that we just saw on the screen here?

(Document displayed)

A In what respect?

Q In the following respect. Don't you say in your memo the following? Quote -- your memo states that you, quote, have not discussed your concerns with senior management.

A I did not express my concerns regarding the FCPA violation. I did express my concerns that these documents showed bribery.

Q (As read)

"I have not discussed my concerns with senior management because I am concerned that the behavior could well include members of senior management."

You state there, do you not, that your concerns about FCPA violations were not discussed with senior management?

A Right. Bribery, though, was. In other words, I told Norman that these documents showed bribery. I told him that John

Cassingham has looked at these documents as well, and he thought they showed bribery.

Q So you're slicing and dicing it that you merely advised Mr. Schwartz about bribery, but you didn't articulate your concerns about it? Is that how you're wordsmithing that phrase (Indicating)?

A No. Because he -- he shut me down by basically saying: You know, I know all about this. You know, I've talked to Bob Thompson.

It start of stopped the conversation.

Q So, again, as a general counsel with a fiduciary obligation to make full disclosures to the Audit Committee, you understood that if a CEO had knowledge of bribery payments, that would be something of importance to the Audit Committee?

A That's why I relayed the conversation with Al Hillman. When he said: Norman couldn't have been involved with this.

And I said: I think he may be.

Q Was Al Hillman conducting the Audit Committee investigation?

A No -- he was a member of the Audit Committee.

Q How old is Al Hillman?

A Today?

Q Yeah.

A I'm not sure. I would guess he would be in his eighties.

Q And was Al Hillman the chairman of the Audit Committee?

A I don't know if he was at one time, but he wasn't on that day.

Q So, just so I understand this, you didn't share it with Lou Drapeau. You didn't share with Martine Beamon. But you shared with the elderly Al Hillman that Norman -- that Norman Schwartz acknowledged an awareness of bribe payments.

Is that right?

A No, I -- maybe I need to clarify a little bit. I was at the audit meeting. Al Hillman was there. Lou Drapeau was there. Ted Love and Deborah Neff. Ted was on the phone. All of them were listening in to this conversation. All of them have an opportunity to ask me anything.

After that comment about Norman Schwartz, they all went dead with questions. And that's when they started talking about getting counsel, and that's when they started talking about suing Pat for malpractice.

Q Okay. Mister -- Mr. Wadler, you understand that, again, it is important to provide all information to the Audit Committee. Right? About the matters under review here?

A Yes.

Q And in your memorandum, you take the position and state that (As read):

"Bio-Rad has a licensing agreement with Life Technologies, a significant competitor. As part of that agreement, periodic audits are authorized to insure that Life Technologies is being paid the proper amounts of licensing fees. During the course of an audit, Bio-Rad was unable to provide the licensing auditors many types of documents that should have been available."

You provided that information to the Audit Committee, right?

A Yes.

Q And your claim here is that Bio-Rad may have violated the books and records provision of the FCPA because it couldn't produce certain books and records. Correct?

A Well, the books and records provision requires issuers -- Bio-Rad is an issuer under the law -- to keep and maintain books and records accurately, which show their transactions concerning the disposal of assets.

Q Is the answer to my earlier question yes, Mr. Wadler?

A I'm sorry, what was your earlier question?

Q You claim in here that Bio-Rad may have violated the books and records provision of the FCPA because it couldn't -- didn't ask for books and records?

A Yes.

Q The answer is yes, then.

A Yes.

Q Okay. But you didn't tell the Audit Committee that the books and records that Bio-Rad couldn't get were actually books and records that were maintained by other companies. Isn't that true?

A If I said that, that wouldn't have been a true statement, because Bio-Rad could get them. If -- if you look at the license agreement that Bio-Rad entered into, that it was selling these products under, I believe the agreement has a section in -- that gives Bio-Rad -- not gives -- requires Bio-Rad to have agreements with any distributors, for example, that it's using, that give it audit rights, and that force the distributor basically into a books and records situation as well, because it forces the books and records of the distributor be made available and for them to keep accurate books and records.

So all Bio-Rad had to do then was go to YY, which had almost half of the business. And it could have gotten all the books and records, it could have made its reports, and we wouldn't have had a problem. For some reason, nobody ever went there.

Q Well --

A Not -- not one visit to somebody who's almost half the business.

Q But for some reason, you don't disclose to the Audit Committee that the books and records that you can't get are books and records maintained by another company, do you?

A They were being main- -- they should have been maintained under our direction, through the license agreement. That's what we were required to do.

Q Well, first of all, with respect to the Life Technologies audit, the vast majority of shipments involved import/export

companies, not distributors. Correct?
A I don't know that. I don't see how you can make that determination, because we weren't able to find records -- I mean, Pat said in his memo, for 2006, 2007, 2008, 2011, 2012.
Q You didn't know that the Life Technologies audit implicated import/export companies, and not -- and not distributors? You weren't aware of that until today?
A No, no. It did -- anybody who brings goods into China needs an import/export. So we all knew that they existed in the transaction.
Q And isn't it true that the documents that you attached to your memo is actually from an import/export company?
A Yes.
Q And is it true that --
A Well, not completely. I mean, some of the documents were from the import/export. I also submitted documents that showed the agreement between the distributor, and the end user. And those showed an order for two products. Then I also showed them the order that Bio-Rad had sent to the I/E company that showed the extra free products that were included.
Q So, the transaction that's affixed or attached to the Audit Committee memo is a transaction that was accomplished to an import/export company. Right?
A Yes.
Q And Bio-Rad has no contractual relationship with the

import/export company. These are separate companies that have and maintain records for their own interests. Correct?

A I don't know if Bio-Rad sought to use its audit rights with the IE company or not. I don't know what Bio-Rad did to obtain that information, if anything.

Q Mr. Wadler, it's a fact, is it not, that Bio-Rad didn't have any audit rights with the import/export companies?

A No, I don't think they -- well, it depends. If you say they were a distributor, maybe they might have. But in other words, an import/export company could also have been a distributor.

Q No, actually, they are two different things. Did you know that?

A I didn't know they couldn't be the same.

Q Oh, okay. Well, would it change your opinion laid out in that memo if you are -- if you were to learn that actually import/export companies are very different than distributors?

A No, because the issues that were revolving around here is not -- I mean, the import/export company is not the issue. The issue is we had an audit. We had requirements under our agreement to maintain books and records that show that these were accurate transactions. Bio-Rad was unable to show the accuracy of this transaction.

The first transaction, the first document and only document that we got at that time, we couldn't match up the royalties. And when you looked at the documents, you can see why you couldn't match up the royalties. Because you only had -- you had the end user agreement that showed only two -- two items coming in. And then you had the order with the I/E company that shows five. All different prices. So there's no way to reconcile. And we were required to keep accurate records, or we would have to pay a markup.

Q When you say "we" were required to maintain adequate books and records, is Bio-Rad an import/export company?

A No.

Q Okay. And the records that you couldn't get were the import/export records from companies based in China. Right?

A You know, it's not that we couldn't get. You know, I think that what this case shows is that we didn't make an effort to go. We -- in other words, I think it's indisputable at this point that we had one distributor --

THE COURT: Let's get a question.

THE WITNESS: I'm sorry.

THE COURT: That is not responsive to the question. Let's strike the answer. Just answer the question.

THE WITNESS: Can you repeat the question?

MR. POTTER: I can't even remember what it is at this point.

BY MR. POTTER

Q Let me just ask you this. Your concern is an ability to get books and records that are maintained by another company. Can we agree on that?

A No. My -- I was trying to get books -- no. I was trying to get the end user documents so we could confirm what that order was.
Q And those documents were maintained by other companies. Right?
A Other than the end user, you mean?
Q They were maintained by other companies. Non-Bio-Rad companies. Right?
A Yes. We didn't make any efforts to get those records.
Q By the way, in your memo you make the provocative assertion and you give the legal advice that Bio-Rad could be held liable for an FCPA books-and-records violation when another company fails to maintain books and records.
A No, no. That's not what I was saying. I was saying if we can't produce books and records, it is our failure. They say we're supposed to make books and records which reflect our transactions. So what we should have been doing is going to the distributor, saying: Okay, let us audit your books, you have 40 percent of the sales, let us see what all these end users order.
And then we would just match those up with the payments we've made, and we wouldn't have to pay anything.
Q But the books and records that you're referring to, they are books and records maintained by other companies. Correct?
A No. That's not what I said.

Q But in fact --
A We -- in other words --
Q Sorry. I'm sorry.
THE COURT: Just finish the answer, and then go to a question.
THE WITNESS: Under the law, Bio-Rad has the obligation to maintain books and records. And what it says is we should have been able to show by our books and records that the royalties we were paying were correct. If we didn't have documents that would establish it, that was our books-and-records violation. And we couldn't defend ourselves by saying: Well, somebody else has the books and records.

BY MR. POTTER

Q In fact, the Bio-Rad China's books and records were in excellent shape, weren't they?
A No. I think Pat's first part of the investigation talks about the very poor records in China before 2008 or 2009, I think he said.
Q Well, actually, let's talk about the investigation he conducted in response to your allegations. He went to China, examined Bio-Rad's books and records, and found that they were in good shape. Isn't that true?
A I don't -- it -- Pat made that statement. And then, you know, when we asked the next question: Well, what did you do to investigate? Why we couldn't get those books and records?

And Pat just said: I didn't look at it. You know, there was one distributor he could have gotten that had almost half of everything. And nobody ever went there. Davis, Polk didn't go there. Pat didn't go there. Our own manager of China never went there.

Q Is the answer to my earlier question yes?

A Could you repeat it again?

Q Certainly. The question was: Is it true that Mr. Norton looked at the books and records at Bio-Rad China and found that they were in good shape?

A Yes -- I don't know what "good shape" --

Q That's all I need. We'll go on to some other areas, okay? But thank you for that answer.

But he's not the only person, actually who went to Bio-Rad China to inspect the books and records. Isn't that true?

A I don't know what you are referring to.

Q Well, first of all, let's start with a base, baseline. You, yourself, never traveled to China to inspect the books and records. Correct?

A No, I'm a lawyer. Not an accountant.

Q Well, lawyers conduct internal investigations, don't they?

A I wish now in retrospect that I would have been charged or allowed to go along with the investigation, rather than being kept in ignorance until they fired me.

THE COURT: So I'm going to have insist that when there is a question asked, you respond to the question.

THE WITNESS: Sorry.

THE COURT: And not just anything that occurs to you. This is not a conversation, as I have said several times.

THE WITNESS: You're right.

BY MR. POTTER

Q So you, yourself, never went to China to investigate the books and records maintained by Bio-Rad's China office. Right?

A No.

Q Okay, but actually, two of your colleagues did. Isn't that true?

A No.

Q Isn't it a fact that Bob Thompson -- well, first of all, who is Bob Thompson?

A He's the controller in China -- I'm sorry; he's the controller of the life science business in the United States.

Q And who is Kumiko Ueshita (Phonetic)?

A She works for Bob.

Q And in fact, they traveled to China to evaluate the books and records maintained by Bio-Rad's China office, didn't they?

A That was interesting. What -- what I heard back from John is that that was not a special trip to do that. They were going over there for budget meetings. And nobody seemed to know how much they had done. And we never got any formal report back on what Bob did.

Q Is the answer to my earlier question yes?
A I'm sorry, could you repeat it?
Q Well, isn't it true that Bob Thompson and Kumiko Ueshita looked into the issue of how Bio-Rad China was maintaining their books and records?
A I never got a report on that.
Q You didn't. You knew -- before submitting this report to the Audit Committee, you didn't consult with your colleagues to determine whether or not anyone had evaluated the quality of the books and records maintained by Bio-Rad's China office?
A We were trying to get documents from that office. And we were unable to, for two years.
Q With respect to Bio-Rad's own offices, did you ever bother to consult with your colleagues to find out whether anyone had made an evaluation as to the quality of Bio-Rad's records? Not some other company's records, Bio-Rad's records.
A Yes, we did. There's a memo in the file from Bob Thompson that shows when John Cassingham is asking him for these very material -- you know, we want to find out what the end user price is, we want to be able to match this against the orders, bob makes the statement: Legal's asking us for all these kind of documents that we don't have.
Very early on, he made that statement, that he didn't have the documents that we needed. So Bio-Rad was aware that there were books and records problem from the get-go.

Q They actually informed you, didn't they, that the books and records in China were maintained in very good shape?

A You are asking me different questions. I mean, the memo that we got told me -- from Bob, the very person you're talking about -- that they didn't have the records we were asking for.

Q The records from third parties. I'm talking --

A No, no. They said they did not have the -- we said: We need records to confirm what the end user was purchasing. And Bob came back, and -- and there were other things around that that we asked.

And Bob came back in that memo which I believe you have, that says: We don't have the stuff. And that was probably a year ago. Probably in 2 -- this is probably maybe in June of 2011. And Bob never went to China. That's why I said this trip that you are alleging to China was just a budget meeting they had.

Q Christine Tsingos is the CFO of Bio-Rad, right?

A Yes.

Q And she also told you that the only documents that they couldn't get for the Life Tech audit pertained to documents from third-party companies. Correct?

A She said that they didn't have the documents we -- we wanted.

Q She actually told you a little bit more than that. She said that: The documents we can't get are the documents that are maintained by other companies.

Correct?

A No. The conversation was, you know, that I heard, certainly, and the auditors heard was, you know: We can't get the documents. Norman won't let me send people.

Q Okay. You make some allegations in your memo about free products. Right?

A Yes.

(Document displayed)

Q And you claim that the documents attached to your memo are evidence of bribery? Is that right?

A They're evidence of free products.

Q Which you suggest are being used as bribes. Right?

A It's an indicator of possible bribery, yes.

Q And one of the documents you attached is a contract between an import/export company and an end user. Right?

A (Inaudible)

Q Is that a yes?

A Yes.

Q I just need it, for the record.

A Yes.

Q The document is at Page 922. Correct?

A I don't know.

Q Let's take a look.

A What tab am I going to?

Q These are your documents, Mr. Wadler.

THE COURT: Exhibit 7.

BY MR. POTTER

Q They're attached to Exhibit 7.

A That's what I wanted to know. Okay.

Q Now, you submitted this document in Chinese to the Audit Committee, right?

A Yes, I did.

Q No one on the Audit Committee reads Chinese, right?

A Not that I know of.

Q They do read English, right?

A Yes.

Q And you actually had an English translation of that document. Correct?

A Yes. Yes, I think we did.

Q You elected not to give the members of the Audit Committee the English version of that translation, correct?

A No. I didn't elect to.

I said in the meeting: We have translations. We also have another 160 documents that you can look at whenever you want, or we can send them to you.

Q Okay --

A In other words, we didn't take everything that I had in my office, because it would have taken, you know, four shopping carts, and would have been impossible to bring over. That's why we made available -- you know, we told them what other information. And I told them to: Call me if you have any questions.

Q Would it have been impossible to give the Audit Committee that contract (Indicating) in English as opposed to Chinese?

A No. It could have been done. If they asked for it, I would have given it to them. But they were -- there were no questions on this document, when I explained that this is the cover document, this was the undercover document.

In other words, this document here, this is the document which goes through Customs. You can see all these Customs stamps. And it only has two products shown here. Just two, okay? And in this document, you look at the two documents that we send through Customs --

THE COURT: Let's get a question --

BY MR. POTTER

Q Let's go back to that document, Mr. Wadler.

A Okay.

Q Do you think it's possible that maybe there weren't any questions about that document because it was written in Chinese?

A No. I think that my explanation was easy for them to understand. Lou is a trained auditor with, I don't know, 45 or 50 years experience. And nobody in that meeting seemed to have any doubts on what I was saying. You know, I didn't get a lot of questions. That's why I told them: If you want to call me, you can call me at home, you can call me in the office.

But everybody in that meeting was -- agreed that what I had seen was what they were seeing. They were looking at these documents. The fact that this wasn't translated, and I wasn't -- this was the document that went through Customs.

Q You believe that the other documents attached to your memo show that Bio-Rad was shipping five products to the end user. Correct?

A Yes.

Q And you say that these additional products are part of this bribery scheme. Right?

A There was a potential for bribery, with the -- in other words, what happened with these extra products that were being included on such a large percentage of these very small amount of orders that we were able to obtain.

In other words, we should have had thousands; we only got 150 or 160. And, you know, 30 or 40 percent of that limited group, you know, showed this pattern of constant free products.

Q Did you know that the products reflected on this document are commonly sold as a system?

A It could sell as a system, or not as a system.

Q Did you know that the system consisted of individual components?

A Well, when you say "systems,"people sometimes buy systems as parts of the system. They're out; they reorder, and get the other products. That's sort of a continual way you do business. Some people buy it, some people don't.

Q So you recognize that the system can consist of components. Correct?

A Yes, but I don't know if these were components for a system.

Q And you never shared with the Audit Committee that this transaction (Indicating) involved a system that could also be sold as components, did you?

A No. But Pat brought that up to the Audit Committee because he -- he hypothetically said that, you know, that might be able to explain this. But in his report, it was just a hypothesis.

For some reason, neither him nor anybody else tracked that fact down, which I assume they would have if it was a valid comment.

Q Actually, before you submitted this memorandum to the Audit Committee, somebody explained the documentation to you. Isn't that right?

A John Cassingham wrote memos on the documentation.

Q Well, Christine Tsingos explained to you that this documentation (Indicating) could be described in the following terms. It's like shipping a product, you could describe the product as "a three-piece suit," or you could describe the product as "trousers, vest and a jacket."

Do you recall her giving that explanation to you, to help you understand what these documents showed?

A No.
Q And you certainly didn't provide that explanation to the Audit Committee, then. Right?
A No.
Q And you don't provide to the Audit Committee that this shipment consists of a system containing individual components. Right?
A No. I did not. What I told them, you know, we had another 155 documents. They showed a similar pattern. I'm not sure if you're telling me, they were all systems? Is that what you're saying? All the orders were systems? Because some of the orders, it would be --
THE COURT: So, let's get a question.
THE WITNESS: I'm sorry.
THE COURT: The question was about this document.
THE WITNESS: Yeah. I do not know whether this is a system or not.
BY MR. POTTER
Q So you submitted this to the Audit Committee. And you didn't even know whether this represented a system on the one part, and then individual components of the system on the other?
A What would the distinction be?
Q Just, yes or no. Did you know that, Mr. Wadler, at the time?
A No.

Q And you didn't know that, because you failed to do due diligence as to what this shipment represented. Correct?

A No. I wasn't doing the investigation. I was just reporting on an issue that needed an investigation.

Q You never spoke to anybody in the appropriate unit to find out what these products were, and what these products meant, did you?

A I knew these were products that Bio-Rad made. I knew that the order with the customer -- let's see. I think we have it here.

Okay. Okay, the order with the customer doesn't talk about a system. It talks about a MyCycler. And it talks about a power pack basic supply. A power pack is basically --

THE COURT: So, I'm going to stop you.

MR. POTTER: Yeah.

THE COURT: Interesting, but the question was only: Did you speak to anyone in the appropriate unit to find out what these products were, and what these products meant?

THE WITNESS: I did not, I --

BY MR. POTTER

Q That's all I need. I'll go on to some other questions.

A Okay.

Q The next issue I would like to bring up with you is the issue about the translations. You claim in this memo that Bio-Rad Chinese employees did not include FCPA provisions in their distributor agreements. Is that correct?

A Yes. Um, which agreements are we talking about, now? Are you talking about the 2012 agreements? Are you talking about the agreements that they sent out after we had put in those agreements, that basically reversed the terms in there? Which set?

Q Sir, I'm referring to your statement. I'm referring to your statement right there, where you say (As read):

"I was told by the translator that the books and records provisions..."

A Oh yes.

Q (Continuing)

"...that Bio-Rad uses in its English versions were not included in the versions in Chinese to the buyers."

Right?

A Yes.

Q So you would agree with me, would you not, that in 2012 when Bio-Rad created new distributor agreements --

A Yes.

Q -- it enhanced the FCPA language. Correct?

A Yes.

Q And you would agree with me, would you not, that those agreements were shipped out to Bio-Rad China for execution?

A Yes.

Q And you would agree with me, would you not, that you believe that business in China is typically done in English by sophisticated business entities. Correct?

A No. Some -- it depends what products you're dealing in. If you're dealing with medical products or high-level scientific products, the people you're interacting with are usually very highly educated, and there's probably a good chance they speak English. If you are just talking about the general population, I would doubt that they have that capability.

Q After Bio-Rad sent the enhanced or the new FCPA language in the distributor contracts to China in 2002 (sic), it's a fact, is it not, that Bio-Rad followed up by sending a two-page letter agreement in Chinese that contained the FCPA provisions?

A. There was one.

Q. Yes. And that was sent, correct?

A. I believe it was.

Q. Okay. And you don't disclose that, do you, in your memo to the Audit Committee?

A. No.

Q. Don't you think that's kind of material, the fact that there is a translated version in Chinese containing the FCPA provisions?

A. No. I thought the more important issue here was that we had documents we put in place. They had been modified without our knowledge or consent and new agreements had been put in which did not contain any FCPA language. That was the point I was trying to make.

Q. And after that two-page letter containing the FCPA provisions, thereafter Bio-Rad translates the entire distributor agreement in Chinese, right?

A. Subsequently, I believe it was, yes.

Q. And the problem was that actually your Legal Department had failed to send that agreement out to China, correct?

A. I think there was -- I learned a couple months later, I think, that Tom had a request for something -- for, I believe, a Chinese agreement and I don't know if he sent it or not or there was some confusion, sir, what I remember about this issue.

Q. Before submitting -- Tom is Tom Brida?

A. Yes.

Q. Does he work down the hall from you?

A. No.

Q. Does he work in Bio-Rad Hercules?

A. Yes.

Q. How long would it take you to get from your office to Mr. Brida's office?

A. Five minutes.

Q. Did you ever walk to Mr. Brida's office and say: Hey, Tom, did you send that translated version of the entire contract to Bio-Rad China?

A. No.

Q. Mr. Wadler, I would like to take up your performance review. If you could look at Exhibit 86?

A. Sure.

MR. POTTER: And, your Honor, I don't know where the Court is in terms of stopping for a break. I can go on or stop as the Court directs.

THE COURT: Let's see. What time is it? It's 9:40. Let's keep going for awhile.

MR. POTTER: Thank you, your Honor.

BY THE COURT

Q. Mr. Wadler, this is the performance review you discussed in your direct testimony?

A. Yes.

Q. And I'd like to direct your attention to the top right corner of the review.

A. Mm-hmm.

Q. Is that "yes"? I'm sorry, just for the record.

A. Yes, yes.

Q. Okay, thank you.

The documents identifies the focal year as 2011, correct?

A. Yes.

Q. Okay. And then turning to the back of the document, it's dated December 20th, 2012, correct?

A. Yes.

Q. And you would agree with me that this review could not cover events in 2013, correct?

A. No.

Q. You wouldn't agree with me?

A. No, no. It wouldn't cover events in 2013.

Q. Okay. And this review was on a scale of 2 to 4.9, correct?

A. Correct.

Q. Would you agree with me that the halfway point between 2 and 4.9 is 3.45?

A. Okay. It's a mathematical statement.

Q. Okay. And your overall score is 3.40, correct?

A. Correct.

Q. So that's actually less than half, right, on this scale?

A. It's a mathematical statement.

Q. And this is the review that you characterized yesterday as fabulous?

A. Yes.

Q. Okay. The other thing that I just want to draw your attention to, when you were reading the review yesterday, you read a part of the review --

MR. POTTER: If I can ask, Ken, underneath there where it identifies the -- the very top box.

(Document enlarged.)

BY MR. POTTER

Q. You identified as part of your evaluation:

"Employee financial acumen, exercise, insightful

judgment, thinks strategically, engage and inspire."
Do you recall reading that yesterday?
A. Yes.
Q. That wasn't part of your review; that's just part of the form, isn't it?
A. Right. Uh-huh.
Q. Okay. Mr. Wadler, when you submitted your Audit Committee memo, the investigation to Bio-Rad's prior FCPA violations had not been resolved with the government, right?
A. I wasn't kept informed, but I don't believe it was --
Q. Okay.
A. -- at that time.
Q. And at the time of February, 2013, the government had not decided on the penalties Bio-Rad would face, is that correct?
A. I was not being informed on what was going on on a regular basis, so I -- I don't know when they may have had those discussions.
Q. But you certainly had an awareness that the government had not meted out any penalties to Bio-Rad as of February, 2013, right?
A. I don't know if they had been discussing that or not.
Q. But you personally have no awareness that the government had fined Bio-Rad or there had been a settlement of the case, right?
A. Right.
Q. Okay. Bio-Rad did not file its 10-K on time in March, 2013;

is that true?
A. Yes.
Q. And that was the first time in 25 years since you were at the company that that had happened; isn't that true?
A. I'll take your word for it. I didn't historically search it.
Q. Well, let me ask you something. You work for a publicly-traded company, right?
A. Yes.
Q. And the failure to file a 10-K on time is a really big deal, isn't it?
A. No.
Q. You don't think it's a big deal to not file your annual report on time with the SEC?
A. Many companies are late in their filing. Bio-Rad has been late more than once. I think the year after that or two years after that they missed another filing deadline. Nothing happened to the company.
Q. Prior to this filing in 2013, had Bio-Rad ever missed a 10-K filing?
A. No. I've already answered that question.
Q. Okay. And it was so significant that Mr. Schwartz called daily meetings of the management team to work together to get the 10-K on file; isn't that true?
A. No. It was -- it was really mostly to try and force me to

change my opinion.

And the other reason that it became, you know, apparent that the meetings were going on so long is they had more time to try to force me to change my opinion. And the reason for that is the auditors had tasked them with a whole bunch of things to do.

And one of the point persons for that was David Gregoire. He is the assigned --

MR. POTTER: Let me say, your Honor, I'm going to object on my own motion as nonresponsive.

THE COURT: Sustained.

So, just again, once you give an answer to a question, stop and wait for the next question, please.

BY MR. POTTER

Q. So here is the simple question. After the 10-K was not filed on time, isn't it true that Mr. Schwartz instituted mandatory meetings of management to work together to get the K on file?

A. There was a meeting that I was present with a lot of the financial people, but there were other people doing other meetings that I was not part of; that were doing tasks that were being assigned to file the 10-K.

Q. So you recall being present at one meeting, correct?

A. No. I was present at several meetings, but --

Q. In fact --

A. -- they were -- they all revolved the subject of getting me

to change my opinion letter.
Q. In fact, you just didn't go to these mandatory meetings, did you?
A. I did.
Q. You missed the vast majority of them; isn't that true?
A. No.
Q. Mr. Wadler, let me talk to you about your job search that you've undertaken.
You're claiming in this-case that you planned to work until you were 75-and-a-half years old, is that right?
A. I was actually planning to work longer than that.
Q. I beg your pardon?
A. I was actually planning to work longer than that.
I think what you're referring to is the average age, you know, of people retiring from these positions.
But my own intentions, I just wanted to keep working as long as I could. If my health was in good shape, I would have kept working til, you know, wherever my working span would have ended.
Q. You took the position in this litigation that you were going to work up until 75; isn't that true?
A. My intention has always been to keep working. It wasn't, you know, after an age. It was just -- you know, I didn't -- as I've already testified, I didn't --
THE COURT: Just listen --

THE WITNESS: Yes.

THE COURT: Just listen to the question and answer it, please.

THE WITNESS: Yes, yes.

THE COURT: I will strike the last answer as nonresponsive.

MR. POTTER: Thank you, your Honor.

BY MR. POTTER

Q. And that was your position?

A. Yes.

Q. And you were 66 when you were terminated?

A. Sixty-six and a half.

Q. And you claim that you would have worked for nine-and-a-half more years after you were terminated in this litigation?

A. Yes.

Q. And you're asking the jury to give you full salary and bonuses as if you had worked those nine-and-a-half years, is that correct?

A. Yes.

Q. And you also claim that you haven't been able to get another comparable job in the three-and-a-half years since you have been fired, is that correct?

A. Yes.

Q. By "comparable," you mean a legal position, right?

A. Well, comparable would be the position that I had, if you're talking about comparable.

Q. You mean as a general counsel?
A. Yes.
Q. You're only interested in getting a position as a general counsel?
A. No. I looked for other positions, but my preference has always been to get a general counsel position.
Q. Well, let's review the steps that you have taken to obtain employment since your termination. First, let's look at your resume, if we can.
MR. POTTER: And, your Honor, at this juncture I would ask that Exhibit 734 be presented to the witness.
(Witness complied.)
BY MR. POTTER
Q. Mr. Wadler, this is your resume, correct?
A. It's one of them.
MR. POTTER: Move to admit, your Honor.
THE COURT: Any objection?
MR. WAGSTAFFE: No.
THE COURT: It's admitted.
MR. WAGSTAFFE: No objection, your Honor.
THE COURT: Thank you. It's admitted.
(Trial Exhibit 734 received in evidence)
(Document displayed)
BY MR. POTTER
Q. You would agree with me that a resume is the most important

document that you could give to a prospective employer when seeking employment?

A. The -- the headhunters -- the recruiters that I went to said that the most important thing I would need was a recommendation from my company.

Q. But in terms of a piece of paper to give to an employer, you would agree with me that a resume is very important, wouldn't you?

A. Certainly, it's important.

Q. Okay. And you wanted your resume to present yourself as a serious professional, correct?

A. Most people do resumes that will help them get a job.

Q. Okay. And in this -- they is the resume that you submitted to try to get a job, correct?

A. It's one of them. I had, I think, 12 or -- well, maybe 15 versions, I think.

Q. Well, Mr. Wadler --

A. But it is one of them, as I admitted, yes.

Q. In fact, this was the resume that you produced in discovery as being the resume that you used to try to get jobs, correct?

A. It was one of the resumes, I think.

Q. You didn't produce any others, Mr. Wadler, did you?

A. I don't know.

Q. And in this resume you identify your email address, correct?

A. Yes.

Q. The email address is on ontology911@gmail.com?
A. Yes.
Q. The meaning of the word "ontology" is the branch of metaphysics dealing with the nature of being, right?
A. Yes.
Q. And 911 is a number you'd call for an emergency service, correct?
A. Yes.
Q. And 911 is also an infamous date in American history for a terrorist attack, right?
A. Yes.
Q. So if somebody is looking to hire you as an $800,000 a year lawyer, your email address is ontology911@gmail.com, correct?
A. Yes.
Q. That's a bit of a red flag for prospective employers, right?
A. No. It was actually a good flag because several of the people I talked to, when I gave my name, you know, they didn't remember when I -- and I said: Maybe you remember as my email address. And the minute I would say my email address, it did what I wanted. It got everybody to remember me.
Q. They remembered you as Mr. Ontology911, that's right?
A. No. They remembered -- in other words, it was something -- look, everybody is trying to get their resume to distinguish themselves compared to everybody else. So if you a catchy name, that helps.

Q. Do you think it was helpful for prospective employers to view you as Mr. Ontology911?

A. I don't know where you get that information. I never had anybody called me Mr. Ontology911.

Q. Another important place to put information for somebody looking for a job is a LinkedIn page, right?

A. I don't really -- I have a LinkedIn page, but I have been on it maybe twice. It's -- it's not just something I'm familiar with. It's not something I use. I'm not a LinkedIn person.

Q. I think you know where I'm going. So let me give you Exhibit 196, please.

A. 196. Let's see.

(Brief pause.)

A. Okay, yes.

Q. Now, LinkedIn is a professional social network that allows you to publish your professional accomplishments. You know that, right?

A. No, I don't.

Q. Well, let me take you -- do you recognize -- Exhibit 196 is your LinkedIn page, correct?

A. Yes, but my LinkedIn page --

MR. POTTER: I'm going to move to strike after "but."

THE WITNESS: Okay.

MR. POTTER: And I'm going to move to admit this, your

Honor.

THE COURT: Any objection?

MR. WAGSTAFFE: So far it lacks foundation, your Honor.

THE COURT: All right. It's admitted.

(Trial Exhibit 196 received in evidence)

MR. POTTER: Okay. If I could publish 196, please?

(Document displayed.)

BY MR. POTTER

Q. This is your LinkedIn page, right, Mr. Wadler?

A. Yes.

Q. And September 22nd, 2016 was more than three years after you were fired from Bio-Rad, right?

A. Yes.

Q. Now, in your LinkedIn page you don't include any professional experience, do you?

A. I didn't know I was supposed to.

Q. And you -- you don't include any educational history in this LinkedIn page, do you?

A. I don't think I have anything on my LinkedIn page. I don't have a picture. I just -- as I said, I'm not a user of LinkedIn.

Q. You knew enough to open up the page, though, right?

A. I was just curious to see what it was. That's why I did it. As I'm sure you've looked through my records, you can see that I wasn't on LinkedIn again probably after I created this.

Q. Well, you did create the page. You knew enough to create the page, right?
A. No. I asked my admin, actually, to create it. I didn't know enough to do it.
Q. And you didn't ask the admin or anyone else to actually put your professional credentials on your LinkedIn page, did you?
A. I didn't know that was even the purpose of it.
Q. Okay. So, Mr. Wadler, you're not a member of the California Bar, are you?
A. Presently?
Q. Yes.
A. No.
Q. In fact, you've never been a member of the California Bar, have you?
A. Yes.
Q. When?
A. From -- well, I was in 2013, 2012, 2011, 2010, I believe 2009, my memory. I'd have to look through my files to tell you the exact date.
Q. You've identified certain records that reflected your attempt to obtain a new job, right?
A. Yes.
Q. I'd like to review those records.
MR. POTTER: And, your Honor, just for the sake of housekeeping ease, these are the -- well, I don't want to

publish them, but they are a series of documents that I think could be given to the witness --

THE COURT: Just give page numbers.

MR. POTTER: Fair enough, your Honor.

THE COURT: Give exhibit numbers.

MR. POTTER: Exhibits are 428, 429, 430, 431, 432, 433, 434, 436, 464, 469, 466, 497, 498, 499, 500, 507, 508, 509, 510 and 511.

And if it would be easier for Mr. Wadler, and if counsel doesn't have any objection, I can give him this list. However the Court wants to proceed.

THE COURT: That's fine.

MR. WAGSTAFFE: I have no objection, your Honor.

THE COURT: Go ahead, give him the list.

MR. POTTER: May I approach, your Honor?

THE COURT: Yes.

MR. POTTER: Thank you.

(Whereupon document was tendered to the witness.)

A. Do you want me to look through --

BY MR. POTTER

Q. I want you to look at these documents and then I will just ask a question about all of them in one fell swoop.

A. Okay.

(Witness complied.)

MR. WAGSTAFFE: Your Honor, if this is going to take a minute, because the witness has been asked to look through a lot of documents, can we do that on a break so the jury is not inconvenienced? I could use a break.

THE COURT: Fine. It's almost 10:00 o'clock. We will resume at 10:15.

Please remember the admonition. Don't talk about the case or let anybody communicate with you about the case.

Thank you. We'll be in recess.

(Whereupon there was a recess in the proceedings from 9:57 a.m. until 10:16 a.m.)

THE COURT: Jury is back. Thank you.

Proceed.

MR. POTTER: All right, your Honor. Thank you.

BY MR. POTTER

Q. Mr. Wadler, let me just begin with maybe a housekeeping matter. Before the break you reviewed exhibits marked between 428 through 511, is that correct.

A. You mean, the list you had?

Q. Yes.

A. Yes.

Q. And those documents represent emails that you sent or received concerning job applications, correct?

A. Yes.

MR. POTTER: Your Honor, I'd move to admit those exhibits.

THE COURT: Any objection?

MR. WAGSTAFFE: No objection.

THE COURT: Those are admitted.

(Trial Exhibits 428, 429, 430, 431, 432, 433, 434, 436, 464, 469, 466, 497, 498, 499, 500, 507, 508, 509, 510 and 511 received in evidence)

BY MR. POTTER

Q. Let's get back to the substance of your testimony, Mr. Wadler.

Before the break I asked you if you were a member of the California Bar. Do you remember that question?

A. Yes.

Q. And you testified under oath that you were a member of the California Bar, correct?

A. At specific times, yes.

Q. In fact, Mr. Wadler, you've never been a member of the California Bar; isn't that true?

A. I was registered as a member under the in-house program that the California Bar Association has.

Q. You were registered as an in-house lawyer to work at Bio-Rad, but you never sat for the California Bar, did you?

A. No.

Q. Mr. Wadler, you testified yesterday that after receiving your performance review on December 20th, 2012, you had absolutely no concerns about your employment at Bio-Rad, right?

A. That's correct.

Q. And you also testified that you would have crazy to believe that your job was at risk after receiving that review, correct?
A. Yes.
Q. And you further went on to testify that you were shocked when Mr. Schwartz terminated you in June of 2013, correct?
A. Yes.
Q. But, in fact, Mr. Wadler, isn't it true that you conducted internet searches for employment lawyers beginning in December 2012, right around the time of your employment review?
A. No.
Q. That's not true?
A. No.
Q. Did you ever conduct internet searches for employment lawyers, Mr. Wadler?
A. Not employment lawyers.
MR. POTTER: Am I allowed to inquire, your Honor, what type of lawyers he was searching for?
THE COURT: Well, why don't you try to refresh his recollection before you do that. I mean, if you have something.
MR. POTTER: If I may, your Honor.
(Discussion held off the record between defense counsel.)
MR. POTTER: May I approach, your Honor?
THE COURT: Yes.
MR. WAGSTAFFE: Your Honor, may I know what the exhibit number is?

MR. POTTER: Sorry.
MR. WAGSTAFFE: Your Honor, this is the first time --
THE COURT: Yes, all right.
And could I have one?
MR. POTTER: Sure. We'll mark it.
MR. WAGSTAFFE: Your Honor, may I have a chance to look at it?
THE COURT: Sure. Look at it now.
You can hand it to the witness.
MR. WAGSTAFFE: Sure. Of course, your Honor.
THE COURT: And identify the exhibit number for the record.
MR. POTTER: For the record, your Honor, this is Exhibit 746-1.
May I approach, your Honor?
THE COURT: Yes.
(Whereupon document was tendered to the witness.)
(Brief pause.)
MR. POTTER: May I approach, your Honor, to take the document?
THE COURT: Please.
(Brief pause.)
BY MR. POTTER
Q. Mr. Wadler, having reviewed Exhibit 746-1, did that refresh your recollection that point in fact you had consulted with employment lawyers --

THE COURT: You want to rephrase that question?

MR. WAGSTAFFE: Your Honor -- thank you.

MR. POTTER: I'm sorry? Fair enough. Your point is well taken. I understand, your Honor. I apologize.

BY MR. POTTER

Q. Did reviewing 746, Exhibit 746, refresh your recollection?

A. No.

Q. Okay. Mr. Wadler, with respect to the document that you provided in this discovery, you provided a number of documents that purported to document your efforts to obtain employment after being terminated from Bio-Rad, correct?

A. Yes.

Q. Those are the documents you reviewed just before the break, correct?

A. Yes.

Q. And the records show, do they not, that in all of 2013, for the six months after you were fired, you applied for just one job; isn't that true?

A. No. I only had records for one job that I applied for. I had -- I had been going to the library and researching and I would send them out from there.

At some point I found out that I needed to have records, so I began keeping records after that.

Q. When did you find out that you should keep records of your employment efforts, Mr. Wadler?

A. Hmm. Fairly early on. Fairly -- maybe August, September, something like that.
Q. Of what year?
A. The year I was terminated.
Q. And as a -- as a general counsel, you understood the importance of maintaining records, right?
A. I didn't think in terms of I was looking for a job, those records.
Q. You didn't understand the importance of documentary evidence?
A. No. I understand the importance of documentary evidence. I just -- it just slipped my mind at that point. It just wasn't something I was thinking of.
Q. You weren't thinking about it?
A. I wasn't thinking about the need to maintain them until somebody told me that it might be an issue, so I should maintain them.
Q. And you would admit that the documents that you produced in this case show that you only sought one job in 2013?
A. No. I was searching for a job for all of '13. I applied to one, I think is what you mean.
Q. You produced discovery in the case, right?
A. Yes.
Q. And the discovery sought your records showing that you were seeking jobs in 2013, right?

A. Yes.
Q. And the records that you produced showed that you applied for one job, correct? And you applied for that job in October 2013, correct?
A. I'll take your word for it. I don't know the date.
Q. Look at Exhibit 428, please.
(Witness complied.)
A. Yes.
(Document displayed.)
Q. This is the letter you sent to apply for your one and only job in 2013, correct?
A. No. I had sent others, but this is the only one I had, had saved, yes.
Q. And you sent this letter seeking a job at the Beverly Hills Unified School District, correct?
A. Yes.
Q. And yesterday you testified that you were only looking or interested in employment in northern California, correct?
A. Yes.
Q. Beverly Hills is not northern California, is it?
A. No, it's not.
Q. And you understood, did you not, that this letter, like your resume, would be an opportunity to make a first impression with your prospective employer, right?
A. This was a letter I was trying to get out very quickly

because I had met somebody at the employment office, and we were talking. I hadn't gotten -- you know, he asked me if I had any prospects, and I said no, and he told me about this job. And, you know, he said -- you know, he knew the name of the lady I could send it to.

And I said: Well, you know, I want to stay in northern California. He said: Well, look there is nothing to lose. Why don't you try --

MR. POTTER: I'm going to object and move to strike.

THE COURT: Sustained. I'll strike the last answer.

BY MR. POTTER

Q. Let me just try again. You understood that this letter represented your first opportunity to make an impression on this prospective employer, correct?

A. I wasn't thinking in those terms.

Q. I beg your pardon?

A. I didn't think in those terms when I was writing the letter.

Q. You weren't thinking in terms of the fact that you were sending a letter for a job and it would be received by a prospective employer? You didn't have that understanding?

A. I knew it would be received by a prospective employer.

Q. You don't make any -- you don't make any effort to sell yourself in that job -- in that letter, do you?

A. No. I was trying to get my resume in front of them.

Q. The ontology911 resume, right?

A. I don't know what you mean by the "ontology" resume.
Q. Okay. You don't describe your experience in that letter, do you?
A. No.
Q. And you don't make the effort to describe any particular interests in the job, do you?
A. I'm interested in the general counsel job. I'm showing that I am a general counsel.
Q. You don't explain in that letter how or why you would be qualified for this job?
A. Not in the letter, no.
Q. And you don't apply for your next job until 11 months later; isn't that true?
A. I don't know the timing, but I'll take your word --
Q. Would you agree --
A. -- for it.
Q. -- that in terms of the documentation that you provided, the documentation you provided shows that you sought your job seven months later?
A. If that's what the documentation shows, yes.
Q. Okay. And that would be in approximately May 28th, 2014, correct? You don't disagree with that?
A. If that's what the document shows, no.
Q. And the documentation shows that you didn't apply for your next job until three months after that, isn't that true?

A. If that's what the documentation shows.

Q. You wouldn't disagree with me that you didn't apply for -- that the documents show that you didn't apply for your next job for another two months?

A. It would be the same response. Whatever the documents show, they show.

Q. Okay. And you have no records for applying for any jobs -- any other jobs in 2004, correct? Or you wouldn't disagree with me --

A. 2004? I didn't --

Q. 2014, excuse me.

A. I don't know what's there for 2014, but I'll take your word for it.

Q. So you don't disagree that in all of 2014 you applied for only three jobs?

A. Yes.

Q. Okay. And after your last job application in 2014, as reflected by your records, you didn't apply for another job until June 2015, correct?

A. Same response.

Q. Okay. But you got busy in your job hunt in June 2015, didn't you?

A. I don't understand what you mean.

Q. Well, in June 2015 -- you wouldn't disagree with me that your records show that actually you applied for three jobs in

one week in June of 2015, correct?
A. If that's what the record shows, yes.
Q. And you submitted these three applications in June of 2015 right after filing your complaint in this lawsuit in May of 2015, correct?
A. If that's what the record shows. I don't remember the dates.
Q. You sent another job application in on -- you don't disagree that you sent in another job application on December 21st, 2015?
A. No. My response is that if the records show that, I think we can just...
Q. And you don't dispute that you applied for three jobs within two weeks of filing your complaint in this matter, do you?
A. I don't know. The record will show whatever it shows. I don't remember the dates that I was doing these things.
Q. You don't dispute that, do you?
A. No. As I said, I don't have any memory of the dates that all of my letters were sent out, if that's what you're asking me.
Q. You hired an expert witness in this case to testify to your job searches, correct?
A. Yes.
Q. And his name was Gordon Kamisar, correct?
A. Yes.

Q. And you don't dispute that he submitted his report on July 1st of -- of 2016?
A. No.
Q. And immediately after filing his report or in connection with his report, you filed for a bunch of other jobs, didn't you?
A. I don't remember. As I said, I don't know the dates that I applied for specific jobs.
Q. Is it fair to say -- or do you not dispute, Mr. Wadler, the following two propositions:
Before your deposition in this case, you only have records of applying for 12 jobs in three years; but in the three months after your deposition and before your expert submitted his report, you actually applied for 11 jobs?
A. The record -- whatever I did, the record will show.
Q. So your job efforts were tied to the progress of this litigation, correct?
A. Absolutely not. They were tied to what was happening in the economy, my ability or, I guess, my inability.
As you know, Bio-Rad refused to give me my Rolodexes back --
MR. POTTER: Move to strike, your Honor.
A. -- and still hasn't.
THE COURT: Let him finish his answer.
MR. POTTER: Okay.
A. And still hasn't. That would have been -- my 40 years of

contacts would be my main way to get moving on a job.

It was only later that I was able to find out about job boards. And as I found out about more and more job boards, I naturally had more and more opportunities.

Also, the economy was improving. Remember, the unemployment went from when I was fired, I don't know, it's probably in the half by now. So it's a much different economy you're talking about.

BY MR. POTTER

Q. But you would agree with your first response to that question, which is, the record is what the record shows, correct?

A. Yes. That's what I previously stated.

Q. And, Mr. Wadler, turning back to your internet searches, let me ask you one additional question. Do you recall searching for employment lawyers in December, 2012 to January, 2013?

A. What were the dates again? I'm sorry.

Q. Yes. December, 2012 to January, 2013?

A. I don't remember.

Q. Would it refresh your recollection to, again, review that document that I provided to you earlier and specifically with respect to the December, 2012 to January, 2013 time period?

A. Yes. I'm not sure what -- what you want me to answer.

To my knowledge, these aren't employment lawyers. I guess, is that what you're asking me? Are these people employment lawyers? Bingham Dana definitely is not employment lawyers. They are a large firm.

And the individual -- I see that you list Martin Murphy. He's not an employment lawyer.

MR. POTTER: Your Honor, at this point I'm going to seek the Court's guidance as to the scope of my cross examination in light of the testimony selectively provided by the witness on the stand.

THE COURT: Well, I will -- we'll have to deal with this outside the presence of the jury.

MR. POTTER: Thank you, your Honor.

THE COURT: Ladies and gentlemen -- if you want to do it now, we'll take just a few minute break.

Ladies and gentlemen, I'm going to ask you to go into the jury room. I apologize for this timing, but it's unavoidable.

(Jury exits the courtroom at 10:33 a.m.)

THE COURT: Okay. What do you want to ask him?

MR. POTTER: Well, I mean, he's selectively identifying lawyers to suggest that he wasn't searching for the type of lawyer that we all know he was searching.

And I think it's fair to ask him whether during this time period he was searching whistleblower law firms, because the internet search shows precisely that.

THE COURT: Oh, I don't -- but that's not the relevant question. It's not -- that's not the question I was allowing you to inquire into. That's not the question.

MR. POTTER: And I faithfully, I hope the Court appreciates --

THE COURT: You're fine so far, yes.

MR. POTTER: No. No, I did. And I faithfully toed the line with respect to the questions. I didn't try to get cute or anything.

But the witness picked up this document and starts talking about: Well, this firm doesn't do that. This firm doesn't do that. Conspicuously absent from his description was Phillips and Cohen, which is a whistleblower firm.

And I think we have a right, in light of that very selective testimony -- and I wasn't asking to publish the document either. I was merely asking him whether it refreshed his recollection.

THE COURT: Well, as I said, I'm not going to get into the question of whether or not there is a whistleblower on this list.

MR. POTTER: Okay.

THE COURT: The question is whether there's an employment firm.

Now, if you wanted to go into any of the individual firms on this and say, "Isn't that an employment law firm?" or, "Doesn't that lawyer do employment law?" I think you can do that because he's -- he's certainly invited that question.

But I don't want anything about whistleblowers.

MR. POTTER: Okay.

THE COURT: Okay?

MR. WAGSTAFFE: That's fine, your Honor.

MR. POTTER: Just so I want to make sure I'm safe and clear.

THE COURT: Go ahead.

MR. POTTER: Just ask the specific firm and say: Isn't that -- do you have an understanding that that's an employment firm? Is that the Court is looking for?

THE COURT: Yes.

MR. POTTER: Okay. Thank you. I just wanted clarification.

THE COURT: Yes.

MR. POTTER: And I appreciate the break because I know this is a concern of the Court.

THE COURT: No, no. And I don't want to --

MR. WAGSTAFFE: Your Honor, to be clear. If the witness says he doesn't know, I don't --

THE COURT: Well, then he doesn't know.

MR. WAGSTAFFE: Exactly. Okay.

THE COURT: And there may be some suggestion that they are going to try to put on something else and we'll deal with that in due course.

So let's get the jury back in.

(Jury enters the courtroom at 10:37 a.m.)

THE COURT: Thank you, ladies and gentlemen, for your patience with us. We've resolved our issues.

So please proceed.

BY MR. POTTER

Q. Mr. Wadler, just two questions.

A. Sure.

Q. Do you recall conducting internet searches for the law firm of Phillips and Cohen?

A. I don't recall.

Q. And in December of -- December of 2012, in particular, do you recall conducting internet searches for the law firm Phillips and Cohen?

A. No. I don't recall.

Q. Do you know that Phillips and Cohen is an employment law firm?

A. I don't. I've never contacted them.

Q. Mr. Wadler, you became aware of the number of suitable jobs that you never bothered to apply for; isn't that true?

A. I don't know what you're referring to.

Q. Okay. Could you look at Exhibit 781, please?

(Witness complied.)

A. Sure.

Q. Mr. Wadler, these are job listings that you received from job boards when you signed up in 2016, correct?

A. The document speaks for itself. I don't have a memory of this specific document.

Q. You produced this?

A. Right, but I don't have a memory of this specific document. I'll look at it --

THE COURT: Take a look at it.

THE WITNESS: Okay.

THE COURT: Take a look at it and answer counsel's question.

THE WITNESS: Okay.

(Witness complied.)

A. Okay.

BY MR. POTTER

Q. Having taken a look at it, do you now recall that this document reflects job listings that you received from job boards in 2016?

A. I don't recall, but I accept that I must have received the list, uh-huh.

MR. POTTER: Your Honor, move to admit.

MR. WAGSTAFFE: Your Honor, it lacks foundation and it's not relevant based on the testimony in light of what we talked about earlier.

THE COURT: I'm not admitting this document for the reasons we talked about and -- and certainly not in this form, but you can ask him questions about specific entries.

MR. POTTER: Okay. Your Honor, I'm pleased to advise you I'm done with my questions.

THE COURT: Okay.

Redirect, please.

MR. WAGSTAFFE: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. WAGSTAFFE

Q. It's still morning. Good morning, Mr. Wadler.
A. Good morning, Jim.
Q. You were asked some questions, Mr. Wadler, on cross examination about --
A. Yes.
Q. -- about your role with the FCPA. I want to ask you some things about that.
Who was responsible at Bio-Rad for making sure that all the employees saw the Bio-Rad anti-bribery policy for 2009?
A. Norman designated Colleen Corey to do that.
Q. So it wasn't Legal, it was HR?
A. Yes, that was explicit.
Q. Who was responsible during that time period for training employees regarding Bio-Rad's anti-bribery policy before 2009?
A. Colleen Corey, Human Resources. She's the Vice-President of Human Resources.
Q. Who did the company decide would be responsible for regularly updating the anti-bribery policy before 2009?
A. Colleen Corey does that.
Q. Are you telling us that it was your belief that Legal shouldn't have had a role in updating the bribery policy?
A. Legal didn't have a role. Legal probably should have had a

role, but it didn't. This was Norman's choice.

Q. Did you ever communicate with Mr. Schwartz about your desire to have Legal take care of this role?

A. Yes, or at least -- at least be a big participant.

Q. I mean, what did Mr. Schwartz tell you about whether Legal ought to play a role in this FCPA issue during this time?

A. Are you talking about the FCPA policy?

Q. FCPA -- the anti-bribery policy.

MR. POTTER: Your Honor, if we could get a foundation, please?

A. The anti --

THE COURT: Let's step back. Why don't you try again?

MR. WAGSTAFFE: I'll try again, of course.

BY MR. WAGSTAFFE

Q. Did Mr. Schwartz tell you why he didn't want Legal to be playing a role for -- with respect to training on the anti-bribery policy?

THE COURT: This is the foundation objection.

MR. POTTER: Yes.

THE COURT: Ask the foundation for that.

BY MR. WAGSTAFFE

Q. Did you ever communicate with Mr. Schwartz on the issue of the anti-bribery policy and Legal's role?

MR. POTTER: Objection. Foundation as to time, your Honor.

BY MR. WAGSTAFFE

Q. Before 2009.

THE COURT: Go ahead. You can answer that question.

A. Yes. I did.

BY MR. WAGSTAFFE

Q. And after 2009, did you address the issue with Mr. Schwartz again?

A. Yes.

Q. And could you tell us when that happened and -- when that happened?

A. We had a management meeting. You know, the issue of training came up. I suggested that the Legal Department do all the training because of the deep level of trouble that we were in, I felt, and that the government would be expecting us to put our best foot forward, which I thought would be the Legal Department do the training, rather than the HR department which didn't really know very much.

Q. And what were told?

A. I was yelled at at that meeting saying: I will be damned if I'll let Legal do the training.

Q. Why did Bio-Rad, to your knowledge, hire Latham and Watkins, an outside firm, to assist it with the FCPA issues when they did come to light?

A. To get advice.

Q. Do you know, was that the very first time that Bio-Rad had

ever used the Latham and Watkins firm?
A. No. They had been using it for 15, probably, years or maybe more by then.
Q. Do you have any knowledge --
A. Or they were using the same partner who was in a previous firm for the whole time I was there. Probably for 30 years.
Q. Do you have any information that anyone at the Latham firm ever suggested updating the anti-bribery policy so that it was -- so that it became a separate FCPA policy?
A. No. And my contact was the partner that was -- and one of his specialties was corporate governance. So if anybody was going to tell me, he would have.
Q. You were asked questions about, again, your personal role in the FCPA.
MR. WAGSTAFFE: Could we put Exhibit 86 up? Thank you, Ms. Guzman.
(Document displayed.)
BY MR. WAGSTAFFE
Q. You'll recall that Exhibit 86 is the employee review that was handed to you on December 20th of 2012?
A. Yes.
MR. WAGSTAFFE: Again, could we look at No. 3? Thank you, Ms. Guzman. No. 3 right there. There it is.
(Document enlarged.)

BY MR. WAGSTAFFE

Q. In your meeting with Mr. Schwartz when he handed you this personnel review, did he communicate to you, in essence --

A. Yeah. He basically --

THE COURT: Let him finish the question.

MR. WAGSTAFFE: Thank you. Thank you. I got to "in essence" but not the essence.

BY MR. WAGSTAFFE

Q. Did he communicate to you, in essence, Mr. Wadler, what he wrote in that review and signed?

A. Yes. His comments echoed what's there.

Q. Did he tell you anything at all, as you understood it, in this review of December 20th, 2012, in writing or personally, that you took to be any complaint whatsoever about anything you had done with respect to the FCPA?

I'm only focusing what he told you on this date --

A. Right.

Q. -- or communicated. Did he say anything?

A. Absolutely not.

Q. You were asked some questions about the scope of this form. Again, was it given to you for the first time at the end of 2012?

A. Yes.

Q. Did you have an understanding that a form and a meeting taking place in December of 2012 was limited only to the things that happened in 2011?

A. No. That's not the way Norman ever did his reviews.

Q. Had you received any other employee reviews at this time that covered anything else in 2012 other than this one?

A. No.

Q. Did you ever receive, ever, an employee review after the one in December of 2012?

A. No. I never received any further reviews until I was terminated.

Q. Did you have an understanding during this process in December, 2012 as to the scope of the coverage of what you two were talking about?

MR. POTTER: Objection. Vague.

A. It was everything --

THE COURT: Overruled. Go ahead.

A. It was my performance through 2012.

BY MR. WAGSTAFFE

Q. Was there some discussion between the two of you that you were going to take a time machine back and only talk about 2011 and ignore the intervening 12 months?

A. No. This is the way they -- they wrote -- I mean, Norman was always late with his reviews for everybody in the whole company. So this is the way it was done.

Q. In addition to what's written here, do you have a memory, generally, that Mr. Schwartz and you were talking about things that had been occurring in 2012?

A. That was most of our conversation.

Q. And did you have an understanding that this was, in essence, your review for your employment as of the day your supervisor gave it to you?

A. Yes. This -- this followed our historical trend. It was the trend, the way Norman did things with all the other managers as far as I knew.

Q. You were asked questions about --

MR. WAGSTAFFE: Your Honor, could I have one moment to look at the document?

(Brief pause.)

BY MR. WAGSTAFFE

Q. You were asked questions, sir, about waiting time from November until the audit memo was delivered?

A. Yes.

Q. Could you explain to us why that passage of time occurred from November through February 8th?

A. Yes. You know, we got the document in November. I think there should be a trail of emails that would show that we had to go confirm the royalty. The royalty wasn't confirmed.

I had John recheck it and, I don't know, that probably took another week or two or something, and then he came in and told me about the bribery that it seemed under the documents that he had reviewed.

Q. Were you, during this three-month period, still making ongoing requests for the documents?

A. Yes. We were constantly making. We were -- we were -- there's a reason the memo that was written to evidence that John wrote is he was so stunned we only got one document in that period was that we were expecting -- and Norman told me that in this meeting: We're going to get a whole -- hundreds of pages, was his exact words, of documents.

So we had one document that seemed to show bribery. You know, I said: John, we're getting a whole load of documents. Let's see if this could just be a mistake or an error of some kind. Let's see what everything else we got.

Q. Were you getting assurances that, may I say, hope springs eternal that you would get some more documents?

A. We were -- every time we would raise the issue, they would say basically: Don't worry. We're going to get you the documents.

But, frankly, you know, as we were heading into two years, we were much, much less optimistic that we were going to get things. But we did get more documents in December. We got more documents in January. And, you know, if you would look at these documents, I mean, they would, you know, fill that table easily.

So there was a huge amount of information to go through. I still had my regular job. I didn't have that much time to go through them, so I was doing as much as I could do.

Q. Okay.

MR. WAGSTAFFE: If we could put Exhibit 7 up? We've seen this before. Exhibit 7 is the report to the Audit Committee.

(Document displayed.)

BY MR. WAGSTAFFE

Q. You were asked some questions -- asked some questions about this document.

MR. WAGSTAFFE: Could we go to the second page? The statement about high level of management? That paragraph. The whole paragraph would be fine.

(Document displayed.)

BY MR. WAGSTAFFE

Q. Who did you -- who did you give this document to, Exhibit 7? Who did you hand it to?

A. Lou Drapeau, Al Hillman. Lou then made copies and emailed them to Ted and Debra.

Q. At the time you gave them this the document, was it your understanding that the Davis Polk firm had even been hired for this purpose?

A. No.

Q. And when you wrote about "high levels of management," could you tell the jury what you meant?

A. I meant what I said, high levels of management. I was talking about the controller for China. I was talking about the manager of China. Anybody in the company would consider these

high level people.
Q. And did you consider that to be a serious issue?
A. Yes.
Q. In addition to writing it this way, when you were before the Audit Committee do you have a memory, generally, of telling them what you just told us as describing who you meant?
A. Yes. And as --
Q. And -- excuse me.
A. And as I said, I mean, they also made the additional comments, Al Hillman did, you know: Norman can't be involved. And I said, you know: I'm not sure of that.
Q. And you said -- you didn't accuse Mr. Schwartz yourself in this memo or otherwise of directly being involved --
A. No. This --
Q. -- in doing bribery, did you?
A. This memory was a request for an investigation. I mean, what I wanted with this memo was an investigation. I hadn't done my own investigation, you know, that would be conclusive. You know, this was to get the ball moving.
Q. Had there been in the prior investigation, Vietnam and others, were there also high level senior managers --
A. Yes.
Q. -- who were working outside the country?
A. Yes.
Q. And were any of those -- and did you mean people in the same

category?

A. Yes.

MR. POTTER: Objection. Leading.

THE COURT: Sustained.

MR. WAGSTAFFE: Okay. Thank you, your Honor.

A. I mean, the people that --

BY MR. WAGSTAFFE

Q. Hold on. There is no question pending, sir.

THE COURT: Wait for a question.

MR. WAGSTAFFE: No question pending.

Q. If you could turn to Exhibit 32?

MR. WAGSTAFFE: And if you'd would go to the top there?

(Document displayed.)

MR. WAGSTAFFE: Is 32 in evidence? I don't know, sorry. I'll do it again.

BY MR. WAGSTAFFE

Q. Can you tell us what Exhibit 32 is? And you can open your binder to it. It might be easier, sir.

(Witness complied.)

A. Okay. I don't see 32 in here.

THE COURT: Probably the other binder.

THE WITNESS: Too many binders.

MR. WAGSTAFFE: You've got three binders up there. We're hoping it's one of them.

That's your deposition.

THE WITNESS: No.

MR. WAGSTAFFE: Okay, let's hope.

THE WITNESS: Sorry. Oh, okay. Last one. All right.

BY MR. WAGSTAFFE

Q. If you would just take a moment to look at it, sir?

(Witness complied.)

A. Yes.

Q. Could you tell us what it is?

A. Yes. Davis Polk, Martine in particular, had, you know, said, you know: We want to address all the concerns that you have. Can you send me a list of them?

Q. Okay.

A. And I said: Sure. It will take me a couple of days, but I'll get it to you.

Q. Is that a fair and accurate copy of the email and its attachments, as you recall?

A. Yes.

MR. WAGSTAFFE: Your Honor, I would move into evidence Exhibit 32.

MR. POTTER: No objection, your Honor.

THE COURT: It's admitted.

(Trial Exhibit 32 received in evidence)

BY MR. WAGSTAFFE

Q. I don't want to go over each issue, but what was the point, as you understood it, of the list that was on page --

MR. WAGSTAFFE: If we could go to Page 2? If you could blow it up a little bit? Thank you. Thank you, Ms. Guzman.

(Document displayed.)

BY MR. WAGSTAFFE

Q. What was your understanding of the point of the list?

A. All the issues that -- these were the issues that were concerns that there might be violations of the FCPA.

Q. And did you understand this, that they were asking -- they were topics they wanted to discuss further with you?

A. Yes.

Q. And what happened after this exchange of the email?

A. I don't remember ever meeting or even talking to them again until I was fired.

Q. Did Davis Polk --

A. Well, I never spoke to them. They never spoke to me. They never called me. I was just put an ice.

Q. And did Davis Polk keep you updated as a general counsel on this investigation of these topics?

A. No. Part of why I was so surprised at my termination, when Norman fired me, is I didn't even know that the -- the investigation had been completed.

Q. And you were asked about the Davis Polk lawyer coming out to Hercules in April or May. What happened at that meeting, in terms of your involvement?

A. There were four of them, four lawyers. They called me into this room. Bill Riley was right in front of me. There was sweat powering off of his face. I said: Can you give me an update on what's going on? And they just sat there stone-faced.

Then Martine, you know, asked me about the Life Technologies settlement. And, you know, I said: Well, am I going to learn anything? And they just sat there, again, silent. It was just a strange meeting.

Q. Did the Davis Polk lawyers, in your opinion, keep you fully informed after that meeting?

A. I was completely shut out. As I said, I didn't know if they were investigating. I didn't know the investigation was completed. I didn't know when it was completed. I didn't know what was being done.

Q. Did they ever, to your memory, share their conclusions with you as the general counsel?

A. No. As I said, on the day I was terminated when Norman brought up, you know, they completed the investigation. They found nothing, you know. Almost spontaneously I said: Well, okay, can I see it? And I couldn't understand when he said no.

Q. You were asked some questions on cross examination about free products and the reference to that in your -- your memorandum of Exhibit 7?

MR. WAGSTAFFE: If we could put that up there?

(Document displayed)

BY MR. WAGSTAFFE

Q. Do you recall these questions?
A. Yes.
Q. And you were asked some questions about one attachment to that memo and one transaction; do you recall that?
A. Yes.
Q. Were there other examples that existed in your mind of free products other than the one example you attached?
A. Well, as I said in my memo, you know -- I don't remember that exact number I had in my memo, but I think it was 150 or 160. I told them, you know, 30 or 40 percent of them showed the exact same pattern. Nobody asked me to see those additional ones, but they all were aware of it.
Q. You were asked some questions, I think it was, about systems and components. Do you remember those questions?
A. Yeah. I --
Q. Just do you remember those questions?
A. Yes, I do remember them.
Q. Okay. And do you have a memory of Ms. Tsingos talking to you about a three-piece suit example?
A. No. I don't have any recollection, but --
Q. Okay. Well, you've answered my question. That's fine.
Let's take a look at even the example -- well, let me say this. As to the other examples that you felt of this -- this problem, were there -- were there some of those other examples

that weren't system and component situations?
A. Yes.
Q. Okay. Let's take a look at your example itself. If we could --
A. There were many, actually.
Q. I understand, but let's take a look at the one you attached.
MR. WAGSTAFFE: I'm looking at 2614.
(Brief pause.)
MR. WAGSTAFFE: It's 12 -- 2229, excuse me, down at the bottom. Thank you.
If you could blow up the numbers there in the middle, number one and two. Do you see that? Number one and two, about halfway down.
(Document displayed.)
MR. WAGSTAFFE: Excuse me for being on the fly, your Honor.
BY MR. WAGSTAFFE
Q. Okay. If you could look -- if you could open your book to Exhibit 7?
(Witness complied.)
Q. We're going to have to do our same little task just now, if you'll bear with me.
A. Okay. Give me just a second.
Q. Page 9229 [sic].
A. Okay. Yes.
Q. Do you see that?

A. Uh-huh.
Q. Okay. This is one of the documents you attached, right?
A. Yes.
Q. Okay. And this reflected this particular contract, how many elements were here?
A. Yes.
Q. One and two, is that right?
A. Yes. On the -- on the cover orders.
Q. And what are the two -- in this format the two products, what were the two numbers involved, if you can read them for each product?
A. The numbers --
MR. WAGSTAFFE: Maybe you can blow them up for my tired eyes?
(Document enlarged.)
MR. WAGSTAFFE: Thank you. There you go.
BY MR. WAGSTAFFE
Q. What did they add up to?
A. I still can't read this number.
Q. Okay.
MR. WAGSTAFFE: Your Honor, forgive me for leading.
BY MR. WAGSTAFFE
Q. Isn't one 6,000 and one is one is 4,100?
A. Yes.
Q. Okay. That was your concern, that there were two items

reflected in this document, in the contract?

A. Well, there were --

Q. Hold on. Is that right?

A. Yes.

Q. Let's turn to the purchase order, which is 9225, which you also attached.

(Document displayed.)

Q. I think it was 9226.

MR. WAGSTAFFE: Your Honor, may I just consult with my colleague for one moment?

THE COURT: Yes.

MR. WAGSTAFFE: Thank you.

(Discussion held off the record between plaintiff's counsel.)

MR. WAGSTAFFE: Okay. Excuse me, your Honor.

Put up 9226.

(Document displayed.)

MR. WAGSTAFFE: They are ahead of me. All right.

BY MR. WAGSTAFFE

Q. Mr. Wadler, this has -- does this have more than two?

A. Yes. It shows five.

Q. I don't want to make you a mathematician, but do the amounts set forth here, the amounts set forth here any of them equal $4,100?

A. No.

Q. Do any of them equal $6,000?
A. No. On the break I was looking -- you know, I don't have any calculator. It's one thing I didn't think I would need. But adding them up in my head, I can't find any way those numbers would add up to the two numbers on top.
Q. Could you tell us why, then, this raised a concern for you?
A. Because they have ordered two products. They were being sent five. If it was a system, those numbers should have added up somehow.
Q. So if you had pants, a vest and a jacket, you would at least expect that they would -- some combination would add up to the items on the invoice itself?
A. Yeah. Well, that's the only way I could make sense of what John said.
Q. Let's return a minute to the distributor contract issue. Do you remember being asked a couple questions about that?
A. Yes.
Q. As of February 8th, did you know whether the unauthorized contract issue was purely a translational issue?
A. It wasn't a translational issue. It was --
Q. Did you hear as of February 8th that there had been additional provisions added to the CDG distributor contracts?
A. Yes.
Q. Could you explain to us, then, what was your concern on February 8th about the contracts?

A. Well, the provisions that had been added, you know, I viewed probably the most serious one is we were very careful to make sure that our distributors could not appoint sub-distributors. Because if you allow that to happen, there was a possibility that they would appoint a sub-distributor that would have no FCPA restrictions. He could do anything he wanted. And the translated Chinese agreement that we had showed that they had the ability to appoint distributors.

There were also financial incentives that were in there that were new.

Q. Could you explain to us what you mean by improper -- financial incentives that were new?

A. Yes, for meeting certain goals they would get certain -- certain amounts.

Q. And why did that raise an alarm bell to you as you reasonably thought of this?

A. Well, if you think back to the experience we've had in extra -- in other countries, you know, whenever there is sort of loose money running around, it can be used for poorer purposes.

The whole idea of the FCPA, in a sense, is to block channels where you can commit bribery. That's why, you know, if there's high commissions, you know, that's a red warning flag. If there's free goods, that's a red warning flag. Because all these things, through people who have had experience in FCPA, they found that it's related to bribery.

You know, just like whenever you don't have documents to back up what you have been doing, the implication is that it must have been paid for bribes rather than legitimate services because you can't show any legitimate services.

Q. You were asked some questions about Tom, have I got it, Brida?

A. Brida.

Q. Brida, okay. You were asked questions about why you didn't just walk down the hall and talk to him. Had you been having any ongoing discussions with him?

A. On other topics. I mean, we had ongoing discussions on FCPA. This just never came up.

Q. Why didn't you just walk down the hall and talk to him?

A. I didn't know about it.

Q. Okay. And --

A. In other words, I never knew that somebody had asked him for a Chinese version. I think -- there is no emails that I'm on.

Q. So you didn't know -- well, let me ask: When did you find out that Mr. Brida, Mr. Brida, had never actually sent the translation?

A. I think at the end of May of 2013, a month before I was fired.

Q. Sir, you were asked some questions about books and records. Do you recall those questions?

A. Yes.

Q. And you raised a concern. One of your red flags in the memo, of the five we talked about, were the books and records, was that right?

A. Yes.

Q. Could you explain to the jury sort of how it works? Bio-Rad has a contract with Life Tech. Tell us how it works for selling products --

A. Well, they have a license agreement with us. They license us to use their technology to make products which we sell around the world.

Probably we pay them over 100 million under this license and my guess is we probably sold over a billion in products under it.

Q. Tell us, what's a distributor?

A. A distributor is someone who sells your products.

Q. Okay. And was there a contractual relationship between Bio-Rad and the distributors?

A. Yes.

Q. Okay. Was it important to you that the documents that were maintained by the distributors also be maintained by Bio-Rad if it was relevant to the transaction?

A. It was a legal requirement. We needed to show we were paying the correct royalties, which involved -- you know, every time you have a sale, there is a royalty due. A product has been sold. That's the whole idea of the books and records, so

it's tracked.
Q. So we can follow it. So tell us what the import/export means?
A. The import/export parties are entities that are granted the right by the government to import foreign products into China.
Q. Could you explain to the jury why, when you sounded the alarm on books and records, you were concerned about having Bio-Rad obtain the documents that it didn't originate but were in the distributors' filed?
A. So we could show what the end user sales were. In other words, we could say to Life: Okay, here is the end user contract. They ordered three products. We shipped them three products. We owe you a royalty just on these three products.
Q. And did you have an understanding of whether Bio-Rad had a right to get those documents upon request?
A. We had several rights. In the license agreement we had with Life, we were required to require all of our distributors to keep accurate books and records, you know, on their royalty payments so we could determine the accuracy of them.
Q. Well, stop for a second so I can follow it.
Explain to us what a provision in a contract with respect to audit rights means? What does that mean?
A. It gives you the right to come into someone's business and essentially look at their business records to confirm the information that you need.

Q. Although the documents are maintained by a third party, Bio-Rad could get them and put them in their files?
A. Yeah. We would have --
MR. POTTER: Objection.
MR. WAGSTAFFE: Sorry.
THE COURT: Go ahead. Overruled.
A. We should have had access when we wanted it to get what we needed to confirm our -- our statements.
BY MR. WAGSTAFFE
Q. Did it concern you at all that Bio-Rad did not have the documents that were maintained by these distributors with whom they were in contract with?
A. This was the --
Q. That's a "yes" or "no."
A. Yes, yes.
Q. We're working on this.
A. Okay.
Q. Now tell us why you believe that? Why that was a concern?
A. This was the largest agreement they had. I mean, it's -- you know, it was elephant in the room. I mean, if you weren't watching that, what were you watching?
Usually there is in companies a great deal of detail work that's done around large agreements like this because the impact on the company can be massive, as unfortunately it was in this case.

Q. So we talked about YY. I had that bad joke about YY why. I won't do it again, I promise.

But with respect to YY, did that raise a concern as to the way that was being handled?

A. As I said, that's what concerned me so much that came out of that meeting. Here we had somebody who had -- first of all, I've never run into experiences like this before at Bio-Rad where one person had 40 percent and nobody visited the distributor. It was in a black box. That in itself should have been a warning to everybody.

Q. So YY wasn't import/export. It was a distributor?

A. It was a distributor. Not only a distributor. It was a distributor who was responsible for 40 percent of the business. If they had just gotten that one distributor, 40 percent of my problem economically would have gone away. And I had -- I had great difficulty understanding why the company wasn't taking any action.

Q. Okay. Let's talk about import/export. Now, many of the documents you wanted were maintained by the distributors, right?

A. Yes.

Q. How about the import/export? Was there an economic, indirect at least, relationship between Bio-Rad and the import/exporters?

A. Indirect, yes.

Q. Well, it involved a lot of money? Did it involve a lot of money?

A. Yes. I mean, we were selling a lot of products.

Q. Have you ever heard the term "economic leverage" and the ability to exercise it?

A. Yes. It's -- it's when -- well, if you're somebody's largest customer, you know, you tend to get your requests filled very quickly and get things you need.

Q. So even without an audit right, you could just say: You don't want to give me the documents, I'm not going to do the contract. Is that your understanding?

A. Somebody has -- you have 40 percent of somebody's business, usually you wouldn't even need audit rights. You would just have to pick up the phone.

Q. Sir, I want to ask you very briefly about the last series of questions you were asked about, about looking for a job.

A. Mm-hmm.

Q. Let's start with this one. What was your age when you were fired?

A. 66 and a half.

Q. When was the last time before -- before June 7th of 2013 you had ever even had to look for a job? I'm not -- I just want the year. All I want is the year.

A. Well, at least 25 years.

Q. Okay. And, by the way, you were asked some questions about job searches coming up around when the expert was disclosed.

Did you even know when Mr. Kamisar was disclosed as an expert?
A. No.
Q. Did you make any attempts -- I'll use a modern term, at least my kids use it -- to network with the Bio-Rad employees?
A. That was impossible for me. Somebody had given pretty clear instructions because no one would speak to me. I mean, you know, a few people who picked up the phone said: Gee, I'm really sorry, but I'm not allowed to talk to you.
Q. Okay. Did you reach out to any of your contacts with the Rolodex firms -- well, let me back up.
Some of us will know, but some of us won't. Tell us what a Rolodex is?
A. Okay. I don't think anybody uses them any more, but these are --
Q. Back up for foundation. You had one, didn't you?
A. I had three of them.
Q. Okay.
A. I was a big --
Q. Tell us what is a Rolodex is.
A. I was a big Rolodex guy.
A Rolodex is -- it's just basically a circular file where you could hold, I don't know, 500 or 1,000, you know, cards on each one of these. And, you know, as I was growing up, you know, additional things. You would get somebody's business card, you know, you would put it in your Rolodex. You know, you

would write a couple notes and, you know, you would use these for contacts. You know, some people would probably use them, you know, when they were looking for jobs.

Q. All right. So that's -- did you reach out to any of your contacts from your Rolodex that you had maintained -- Rolodexes, or maybe it's Roladices, that you had maintained at the company?

A. No. It --

Q. Tell us why not?

A. Okay. Well, the short answer is because they wouldn't give them to me. We asked again and again and it was just nothing. I just couldn't understand why they were trying to interfere with my job search.

Q. Were you concerned about the ability to get a reference from the company that had just fired you?

A. Yes.

Q. And what was your concern, to get a reference?

A. It's very hard to get a high level -- well, I can tell you actually from experience now. It's impossible to get a job without references, a high level job. Nobody would hire a general counsel without references.

Q. For example, in your experience, you know, years ago in employment, did you have experience that people usually liked to talk to your last supervisor?

A. Always.

Q. Did you have a concern --

A. I talk --

Q. Did you have a concern in your mind as to what would happen if they -- if a potential employer, even without telling you, just made a contact with your former supervisor, Mr. Schwartz?

A. You mean, what would happen?

Q. Well, did you have a concern in your mind as to how successful you might be able to be in a job search given that fact?

A. I thought it would be virtually impossible.

Q. Did you ask any of the many law firms you had worked with for a reference?

A. Well, I didn't ask Latham, which was the longest one, but that's because before Potter's firm took over the case, they were the ones --

Q. Mr. Potter, who is sitting here?

A. Yes.

Q. Okay.

A. They were the firm that was representing Bio-Rad against me. So they weren't a likely candidate.

I did call other law firms that Bio-Rad had worked for. They were nice about it, but they said, you know: I'm sorry we can't help you. It would jeopardize our business.

Q. If you'll go back 25 years or so when you last looked for a job, could you generally tell us what your life experience was in looking for a job in those days?

MR. POTTER: Objection. Relevance, your Honor.

THE COURT: Overruled.

A. You would get one of the newspapers. You know, you would look at the "Attorney" sections. There would be several pages and, you know, you would call or send resumes in to people.

BY MR. WAGSTAFFE

Q. Did you use the internet back then?

A. I don't know when the internet first existed, but no. Definitely not back then.

Q. Sir, how old are you now?

A. Seventy.

Q. So at the age of 70 someone said you ought to have a LinkedIn page, is that right?

A. Yes.

Q. What do you know about LinkedIn?

A. Almost nothing. I don't use it.

Q. Did anybody tell you: Oh, my goodness. At your age you ought to have a LinkedIn page and fill it all up with stuff?

A. No.

Q. Okay. Maybe you're better off. I don't know.

What resources did you look to for a job in 2013, that first year, to help you find a job?

A. I looked in every newspaper that was sort of in the Bay Area. That's why my job searches in those periods, you know, were sort of all over.

Q. Did you reach out to any recruiters? Did you ever go to a recruiting company and -- and have you reach out to them? Did you do that?

A. Yeah. I reached out to Major Africa. They were sort of the biggest executive search for general counsels it appeared to me.

Q. Did anyone there give you any opinion about how tough it would be to get a job?

A. Three people.

Q. Could you tell me, generally, what you were told?

A. You know, they might be able to find some special situation, but, you know, for a general counsel's position, you know, or a high level position it would be virtually impossible without a recommendation.

Q. And you were asked questions about applying for jobs. Did you apply for general counsel jobs?

A. Yes.

Q. Can you give us a recollection of some that you applied for?

A. How many? Which --

Q. Well, did you apply for a general counsel for the Beverly Hills Unified School District?

A. Yes.

Q. Did they offer you a job?

A. No.

Q. Did you apply as a law program specialist for the U.S. China Exchange Council?

A. Yes.
Q. Did they offer you a job?
A. No.
Q. Did you apply for a technology licensing specialist for an unidentified -- for an unidentified company?
A. Yes.
Q. Get a job from them?
A. No.
Q. Did you apply as a corporate counsel for Zendesk, Z-E-N-D-E-S-K?
A. Yes.
Q. Did they offer you a job?
A. No.
Q. How about, did you apply for a general counsel for Inflection?
A. Yes.
Q. Did they offer you a job?
A. No.
Q. How about General Electric, did you try there?
A. Three times.
Q. Did you get interviews?
A. No.
Q. You were asked -- I'll ask you a couple others. How about a corporate counsel for Cloudera? Excuse me if I'm mispronouncing it.

A. No, that's correct. No.
Q. Did they offer you a job?
A. No.
Q. Did you apply for head of legal operations for Global Legal?
A. Yes.
Q. Did they offer you a job?
A. No.
Q. Did you apply for patent counsel job for 23andMe?
A. Yes.
Q. Did they offer you a job?
A. No.
Q. Did you apply to be a general counsel for AppDirect?
A. Yes.
Q. Did they offer you a job?
A. No.
Q. How about being the principal legal counsel for Blackhawk Network? Did you apply there?
A. Yes.
Q. Did they offer you a job?
A. No.
Q. How about, did you apply to be a senior counsel for Bionic Group, LLC?
A. Yes.
Q. Did they offer you a job?
A. No.

Q. Senior counsel IP for Metavation, Inc., did they offer you a job?
A. No.
Q. Corporate counsel for Fluidigm?
A. Fluidigm.
Q. Did they offer you a job?
A. No.
Q. Senior counsel for Roku, did they offer you a job?
A. No.
Q. Why did you apply for these jobs?
A. I was getting tired of being unemployed and getting rejected, so I kept applying for more and more jobs.
Q. Did you apply for any jobs in a law firm as a partner?
A. It wouldn't be realistic --
Q. Hold on. Did you?
A. No.
Q. Tell the jury why you didn't do that?
A. Well, actually, I did. I called up a law firm, you know, to see if -- if they could have something -- basically without a -- what's known in the field as a book of business, you know, a bunch of clients, you know, no large firm is going to hire you.
Q. Excuse me for asking this. Did you apply to a law firm to work as an associate attorney at your age?
A. No.
MR. WAGSTAFFE: Your Honor, I have no further questions.

THE COURT: Mr. Potter, anything further?

MR. POTTER: Yes. Just very briefly, your Honor.

RECROSS EXAMINATION

BY MR. POTTER

Q. Mr. Wadler, you would agree with me, would you not, that you intensified your efforts to obtain a job after this litigation started?

A. Intensified? No. I didn't intensify. I -- as time went on, I found, you know, more sources.

MR. POTTER: I'll strike after "no," your Honor, and move on.

THE COURT: Denied, but go ahead and ask the next question.

MR. POTTER: Yes.

I'd like to at this time play Page 280, Line 15 to Page 281, Line 1 of the witness's deposition.

THE COURT: Any objection?

MR. WAGSTAFFE: No, your Honor.

THE COURT: Go ahead.

(Videotape played in open court, not reported.)

BY MR. POTTER

Q. So you retained a headhunter just a day or two before your deposition, is that correct?

A. No. I thought the question -- I think I misunderstood the question. I thought she meant, you know, had you been -- before ever known this headhunter, and he had called me when I was at

Bio-Rad. I didn't have my Rolodex, so it was just luck when I was -- I was reading something and the name came up and I remembered his name.
Q. Let's look at Exhibit 32, please.
A. The -- if I can finish?
Q. Actually, no.
MR. POTTER: I move to strike at this juncture.
BY MR. POTTER
Q. I would just ask you to look at Exhibit 32, please.
A. Sure.
THE COURT: Denied. Ask the next question.
(Document displayed.)
BY MR. POTTER
Q. Exhibit 32, which is in evidence -- if I can go to the next page -- this represents a list of issues you identified for Davis Polk to investigate, correct?
A. Correct.
Q. And Davis Polk, in fact, asked you to list the -- the issues that you thought deserved further investigation, correct?
A. Yes.
Q. And so when you testified earlier that Davis Polk never asked you questions that would have sought information about Mr. Schwartz, that testimony was false, right?
A. Can you repeat that again? I'm sorry.
Q. Certainly. When you testified earlier that Davis Polk never

asked you any questions about whether Mr. Schwartz had an awareness of FCPA violations, that testimony was false because Davis Polk asked you to list all the issues of concern, correct?

A. The -- I didn't know if Mister -- I didn't ask them to investigate Mr. Schwartz. I asked them to investigate these issues.

If -- if -- you know, if they interviewed Mr. Schwartz, I hoped they would interview all the relevant parties on this, on these issues.

Q. So to break this out. Your earlier testimony was false when you said Davis Polk never asked you questions about the FCPA?

A. No, no. You're tying things together untied. They never asked me about Mr. Schwartz. Wasn't that your question?

Q. They asked you --

A. They --

Q. They asked you -- they asked you to list potential issues to investigate, right?

A. Yes. And these are issues --

Q. And you prepared a list, right?

A. Yes.

Q. Okay. And with respect to this list, not only did you prepare it a first time, you later revised this list, didn't you?

A. Yes.

Q. In fact, Exhibit 32 represents you adding still more issues

to investigate, correct?
A. I think we added and took some off, actually, is what happened.
Q. And so let's look at, if we could, Pages 43 and 44. And I count up 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 issues that you asked Davis Polk to investigate, right?
A. I'm not -- there's -- there should be other memos. I'm not sure which of these attachments go correctly together. Because there were also -- there were at least one or two more drafts of these memos that should exist.
Q. Do you disagree with me that this email identifies 18 issues for Davis Polk to investigate?
A. Yeah. I'm not sure if this is the one that was sent. I don't think so because the one I remember sending had -- I'm almost sure this wasn't the one that I sent because the one that I sent had various names in the Legal Department next to each of these because it was showing the people that they should talk to further on those issues. So this -- this couldn't be the right one.
Q. Mr. Wadler, do you remember approximately 10 minutes ago your lawyer presented this document to you. You authenticated this document and it was received in evidence in this case?
A. Yes, I do. And --
Q. And does the document, on the first page of the document, indicate it's from Cindy Barlow, your secretary, to Martine

Baemon?
A. Yes.
Q. And does the document further indicate that it is listing attachment of potential issues to further investigate?
A. Yes. But there were --
Q. And does the last two pages of this document reflect 18 issues or 16 issues to identify, to investigate further?
A. Yes, but I do not think this was the final document that was sent to Davis Polk.
Q. Well, with respect to the 16 or 18 issues on this document, can you show me where you tell Davis Polk to investigate Norman Schwartz for having knowledge of FCPA bribe payments?
A. It's not here. I never asked them to -- I never asked them to investigate Davis Schwartz [sic] for bribe payments, so...
Q. Can you show me where on this document, where you asked Davis Polk to investigate 16 or 18 issues, you asked them to investigate the controller of China's involvement in FCPA violations?
A. If you just restrict to this document, you know, it doesn't, but this was not all the documents we sent Davis Polk by a long shot.
Q. Is the answer to my question, no, you don't ask them to investigate his involvement in bribery in its list of 18 things to investigate?
A. It's not here in this -- on this document.

Q. And similarly can you show me where on this document you asked Davis Polk to investigate the complicity of the manager of China with respect to FCPA violations?

A. It's not in this document.

MR. POTTER: Nothing further, your Honor.

THE COURT: Mr. Wagstaffe?

FURTHER REDIRECT EXAMINATION

BY MR. WAGSTAFFE

Q. Mr. Wadler?

A. Yes.

Q. Do you want to get a job?

A. Yes.

MR. POTTER: Objection. Beyond the scope of --

THE COURT: Sustained.

MR. WAGSTAFFE: Okay. Nothing further, your Honor.

THE COURT: Thank you. You may step down, Mr. Wadler.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Next witness please.

MR. WAGSTAFFE: Thank you, your Honor. If we could have -- I would call Mr. Norman Schwartz.

THE COURT: Mr. Schwartz, if you would take the stand?

MR. POTTER: Your Honor, my co-counsel advises there is actually one evidentiary issue that we would ask the Court to take up before Mr. Schwartz takes the stand. Brief.

THE COURT: No. You've had your chance.

MR. POTTER: Okay.

THE COURT: You should have done it before. We're going to do it -- we're going to proceed with this witness.

NORMAN SCHWARTZ,

called as a witness for the Plaintiff herein, having been duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Make sure you speak clearly into the microphone. Remember, it cones. And make sure that you speak clearly.

Could you please state your full name for the record?

THE WITNESS: Norman David Schwartz.

THE CLERK: Could you spell your last name?

THE WITNESS: S-C-H-W-A-R-T-Z.

THE CLERK: Thank you.

MR. WAGSTAFFE: May I proceed, your Honor?

THE COURT: Yes, please.

MR. WAGSTAFFE: Thank you.

DIRECT EXAMINATION

BY MR. WAGSTAFFE

Q. Good morning, Mr. Schwartz.

A. Good morning.

Q. We have never met before, have we?

A. Only here in the courtroom.

Q. Okay. You are the President and Chief Executive Officer of

Bio-Rad, is that right?

A. Yes.

Q. When did you become the CEO -- you know what I mean by CEO, don't you, sir?

A. Yes.

Q. When did you become the CEO of Bio-Rad?

A. In 2003.

Q. Bio-Rad has grown to be a large global company, correct?

A. Yes.

Q. Does billions of dollars of business every year, right?

MR. POTTER: Objection. Relevance.

THE COURT: Overruled.

A. Yes.

BY MR. WAGSTAFFE

Q. I mean, you're the person who signs the 10-K which discloses the finances every year, aren't you?

A. Yes.

Q. And how many countries in the world does Bio-Rad have operations in?

A. We do business in over 100 companies -- countries around the world.

Q. You have 7800 employees, is that about right?

A. A little over 8,000.

Q. 8,000. And, in fact, it has -- Bio-Rad has operations in every continent in the world except Antarctica, correct?

A. I believe that's true.
Q. Mr. Schwartz, you had your deposition taken twice in this case, correct?
A. Yes.
Q. You knew it was important to tell the truth at your deposition, right?
A. Yes.
Q. You knew your testimony at the deposition bore the same weight as if you were sitting in front of a judge and jury. You knew that, didn't you?
A. Yes.
Q. In fact, at the very beginning of the deposition you were told that -- to confirm your understanding that although you're in a deposition, it was as if you were in a courtroom in front of a jury. You knew that?
A. Yes.
Q. And you spent a lot of time getting ready for that deposition, didn't you?
A. Yes.
Q. You met with your lawyers for six to eight hours before your first deposition alone, right?
A. I don't remember the exact time, but I won't disagree.
Q. Okay. And you reviewed 50 or 60 documents to get ready for just that first deposition; isn't that right?
A. Okay.

Q. Well, let's -- I don't want to do this all the time, but perhaps we could play Page 15, Line 25 to Page 16, Line 2.

THE COURT: All right. If I could have a copy of the deposition, a witness binder as well.

MR. WAGSTAFFE: Your Honor, may I approach?

THE COURT: Yes.

MR. WAGSTAFFE: This is, I believe the deposition.

(Whereupon document was tendered to the Court.)

MR. WAGSTAFFE: Your Honor, doing weight lifting. I'll bring you the exhibits.

(Whereupon binder was tendered to the Court.)

THE COURT: Page and line again, please.

MR. WAGSTAFFE: 15, Line 25 through 16, Line 2.

THE COURT: Any objection?

MR. POTTER: No objection, your Honor.

THE COURT: Okay. Go ahead.

THE WITNESS: Is there some exhibit I should be looking at here?

THE COURT: No. They are going to play your deposition.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. And when you met -- you met again with your lawyers for several hours before the second day of your deposition, correct?

A. Yes.

Q. And, again, you reviewed documents to be certain as to the

accuracy of your testimony at the deposition, correct?
A. Yes.
Q. And then you actually reviewed the written transcripts of the deposition afterwards to make sure that they were accurate, correct?
A. Yes.
Q. And, in fact, you made only a handful of small word -- meaning, three or four small word changes to the entire transcript, correct?
A. Yes.
Q. You were happy that what you had said was an accurate recitation of your testimony, correct?
A. Yes.
Q I want to draw your attention to bribery, Bio-Rad, 2009 investigation. You are aware, are you not, sir, that some Bio-Rad employees around the world violated what is called the Foreign Corrupt Practices Act prior to 2010, correct?
A Yes.
Q And the company had an investigation and a report done by a lawyer named Patrick Norton. Correct?
A Yes.
Q And you know that Bio-Rad entered into an agreement with the federal government where it agreed to certain facts that occurred. Correct?
A Yes.

Q You signed that agreement, didn't you, sir?
A I did.
Q Some Bio-Rad employees in Thailand and Vietnam had paid kickbacks as bribes to government officials. Correct?
A Yes.
Q Now, Bio-Rad had a written policy prohibiting bribery at that time, correct?
A Yes.
Q And Bio-Rad employees in Russia failed to keep accurate books and records. Isn't that right?
A Yes.
Q And that is also considered separately, as you understood it, a violation of the Foreign Corrupt Practices Act. Correct?
A Yes.
Q And Bio-Rad had written policies that required employees to keep accurate books and records. Correct?
A We had policies that required people to keep accurate books and records?
Q Sure.
A Can you point to such a policy?
MR. WAGSTAFFE: Your Honor --
THE COURT: Why don't you answer the question.
THE WITNESS: Okay. Um, I'm not aware of the specific policy.
MR. WAGSTAFFE: Okay. Let's go to Page 105. Lines 21 to

24.

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Please play that.

MR. WAGSTAFFE: Your Honor, may I inquire, just to make sure I'm not standing in the way of somebody?

THE COURT: Yeah, that's all right.

MR. WAGSTAFFE: Am I okay for you to see it?

(Jury indicates in the affirmative)

MR. WAGSTAFFE: Okay, thank you.

THE COURT: Go ahead.

MR. WAGSTAFFE: If there is something on the bottom, I'll try bring it up.

(Portion of video deposition played, not reported)

MR. WAGSTAFFE: I'm looking for -- I'm sorry, Your Honor. Choreography. I'm looking for 105, Lines 21-24.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q You had such general rules, didn't you?

A Accounting rules, yes.

Q So these individuals in Russia, Vietnam and Thailand were not only breaking the law, they were violating Bio-Rad policies. Correct?

A Yes.

Q And Bio-Rad fired six people as a result of these

violations, correct?
A Six or more. I'm not sure, exactly, the number.
Q They were all given notice of their firings, weren't they? Several weeks in advance. Isn't that right?
A No. I don't believe so.
Q They were -- they were -- they went -- did somebody walk in their office and fire them on the spot? These people who had violated the FCPA?
A When the investigations were completed, there were people who were dismissed, yes.
Q You are the CEO of the company. Were they fired on the spot?
A I don't understand "on the spot."
Q Did somebody go in their office and tell them they were being fired?
A In most cases, yes.
Q Do you know whether they were allowed to gather their things, these people who had violated the FCPA, before they were fired (sic)?
A I was not present at those firings.
Q But Bio-Rad fired these six people as a result of the violations. Correct?
A Yes.
Q And Bio-Rad paid the Securities and Exchange Commission $40.7 million as a result of this misconduct in Russia, Vietnam

and Thailand. Correct?
A I don't -- the total number is actually 55 to the government. I don't know the breakdown between the two.
Q Well, if I told you that 14.35 million was the fine and 40.7 was the misconduct, does that sound right?
A That sounds right.
Q I mean, that was your responsibility to know about these numbers. Right?
A Yes.
Q A lot of money for a CEO to pay attention to. Right?
A Yes.
Q And Mr. Wadler had recommended that Bio-Rad voluntarily report this conduct to the government when it was discovered. Isn't that right?
A I believe that was Pat Norton who made that recommendation.
Q And Mr. Wadler joined in it, didn't he?
A Probably.
Q You say "Probably." He was the general counsel of the company. Right?
A I don't remember the specific incident or the specific conversation.
Q But Bio-Rad did voluntarily report the conduct. Right?
A Yes.
Q Now, when -- when Mr. Norton's investigation concluded in 2011, he also raised numerous red flags in China. Correct?

A Yes.
Q But he concluded there was no violations. Right?
A Correct.
MR. WAGSTAFFE: If we could go to Exhibit 35, Your Honor, which is in evidence.
(Document displayed)
MR. WAGSTAFFE: If you could turn to what is Page 14 of the PowerPoint, if you could blow that up at the top, Ms. Guzman?
(Document displayed)
MR. WAGSTAFFE: Thank you.
BY MR. WAGSTAFFE
Q You recall being in a meeting as the CEO where this PowerPoint was presented, right?
A Yes.
Q And you were paying attention, weren't you?
A Um, yes.
Q And this was serious, yes?
A Oh, yes.
Q And Mr. Norton -- when did this meeting take place?
A This was in September of -- 2011, I believe.
Q That's right.
A '11? Yeah, okay.
Q And he raised several red flags. You recall him saying that, don't you?
A Yes.

Q You recall him saying that China was a country that had widespread corruption going on in it? Right?
A Yes.
Q You had no basis to disagree with the conclusion that China was one of those countries in which there was wide spread governmental corruption, including bribery. You knew that was the state of affairs in that country, didn't you?
A Yes.
Q You had had prior reports about bribery, and you knew about bribery potentially occurring in that country. Right?
A Yes.
Q And that's something the company is very concerned about because of the Foreign Corrupt Practices Act. Right?
A Yes.
Q And he reported that there's very high unexplained commissions on certain sales in China, often 40 percent or more. Do you see that?
A Yes.
Q Unexplained commissions is the -- one of the big red flags for bribery, isn't it?
A Yes.
Q Giving away free products is one of the important items where bribery can occur. Isn't that right?
A It could.
Q You know what under -- undercover, under the cover means,

don't you?
A No.
Q Until this trial, sitting here, you had never heard that something is undercover or under the cover?
A No.
Q Never heard of it.
A No.
Q First, do you understand that he said that there was a marketing report that suggested that there was some knowledge of corruption risks in China?
You knew that, didn't you?
A Yes.
Q And this raised a red flag for you. Didn't it?
A Yes.
Q It raised that red flag in 2011. Right? Right?
A It -- as part of this report, yes.
Q And Mister -- Mr. Norton advised you at the meeting that (As read):
"Nevertheless, no evidence of improper payments has been found to date."
Do you see that?
A Yes.
Q What did you understand him to mean when -- "found to date"?
A That following his investigation, he had found no evidence of actual corruption.

Q But "to date," you understand that that meant he thought: Maybe we ought to look into it some more. Right?

MR. POTTER: Objection, Your Honor. Calls for speculation.

THE COURT: Overruled. Asks for the witness's understanding.

THE WITNESS: Yeah. I don't know what he meant by "to date."

BY MR. WAGSTAFFE

Q I'm not asking him. I'm asking what you understood, when he used the phrase: "to date," this is what we got. Did you understand that to mean that he thought, boy, we'd better keep looking because there's more to look at?

A I don't know what my understanding was at that time.

Q Okay. Did it raise a red flag for you?

A No.

Q So did you disagree with Mr. Norton when he said these are serious red flags?

A No.

Q Okay. But nevertheless, raised no red flag for you at all. Is that what your testimony is?

A The -- what -- I'm sorry. Maybe I just don't understand your question.

Q I'll try it again.

A Please.

Q Are you telling this jury that after hearing this report

(Indicating), you did not personally have some serious red flags in your mind that this corrupt country in China might have some problems for Bio-Rad?

MR. POTTER: Objection, vague.

THE COURT: Overruled.

THE WITNESS: We always had -- had worries about China.

BY MR. WAGSTAFFE

Q And so did you take a proactive role to make sure that this was looked into in 2011?

A This was the purview of the Audit Committee at this point.

Q Did you take a proactive role, yourself, as the CEO of a multi-billion-dollar company, to make sure that we got behind what might be a similar situation of corruption in China that you had already found at great levels in several other countries?

A No. Again, this was being handled by -- by Pat Norton, and the Audit Committee.

Q And with respect to the compliance with the FCPA, that was being handled by the HR Department. Right?

MR. POTTER: Objection, vague.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. WAGSTAFFE

Q In fact, Mr. Wadler told you on several occasions that he wanted Legal to play a bigger role when it came to FCPA

compliance -- or compliance with the ethics policy, and you told him no. Right?
A That's not correct.
Q Are you telling us you never told Mr. Wadler words to the effect: I'll be damned if Legal takes care of that, or words of that effect?
A That is not true.
Q Sorry; I did a double negative. Sorry. Are you telling us that never happened?
A That never happened.
Q Now, in 2010, some board members suggested that you fire Mr. Wadler as a result of the FCPA issues. Right?
A Yes.
Q But you never told that to Mr. Wadler, did you?
A No.
Q You never told him that there was this group of people or persons who thought he ought to be fired. Didn't say a word to him. Right?
A Correct.
Q In fact, you never even gave Mr. Wadler any instructions or goals that he had to meet in order to keep his job as a result of the 2010 conversation with the board. Right?
A Correct.
Q You gave Mr. Wadler no warning whatsoever that there were board members who wanted him fired in 2010. Right?

A Correct.
Q You thought he should be given a further opportunity to show he was capable of performing his duties, right?
A Yes.
Q And you wanted to see him through the crisis period of the FCPA investigation. Right?
A I'm sorry; I didn't get that question.
Q And you wanted him to see the company through the crisis period of the FCPA investigation.
A We wanted to give him a second chance.
Q Well, you wanted -- second chance; he didn't know he was facing a first chance, did he?
A Well, he didn't, but I did.
Q All right. And, because you wanted to have him to be the one through the crisis period of the FCPA investigation. Right?
A He had been a very valuable employee. And -- and, you know, it was my opinion that he could -- he could be -- continue to be a valuable employee.
Q Pretty serious issue that you were facing with these big red flags in China involving potentially millions of dollars, isn't that right, sir?
A Yes.
Q And you weren't going to put somebody to see that through who you didn't think could do it, did you?
A Right.

Q His prior behavior was not such that you thought, boy, you don't want to risk that one. You trusted him, based on your years of experience, to do it right. Right?
A Yes.
Q Let's be clear. He did see the company through that period, didn't he?
A Um, yes.
Q In other words, the concerns that were raised were satisfied in your mind, in your mind, that he did a good job in getting the company through these prior FCPA investigations. Right?
A Yes.
Q At no time during this period did you tell him his job was in jeopardy, did you?
A No. During -- I'm sorry, let's go back for a second. During what time?
Q Sure. During the time that followed the investigations we just talked about after 2011 with these red flags.
A There was one time when I sat down with Sandy and Christine Tsingos, probably in the two-thousand-and -- oh, trying to think back. Probably in early 2013, where I sat down and basically scolded both of them, that they needed to figure out how to work together or I would have to find another alternative.
Q Not one word in your notes on that meeting about the FCPA. The FCPA doesn't appear in your notes, does it?
A No.

Q And you take notes when you're at meetings, don't you?
A Sometimes.
Q Well, it's your practice, if there's an important note, that you keep it and put it in a file on the people who report to you. Right?
A Sometimes.
Q Well, if you think it's important or significant, you put it in your file, don't you?
A Yes, I can.
Q Well, that's what you told us at deposition, isn't it, sir? That if it's a significant note, you keep it, and you keep a copy of it, and you put it in your file on the person. Right?
A That's typically my practice.
Q Mr. Wadler reported to you. Right?
A Yes.
Q And he was four doors down, right?
A Yes.
Q And if there was a significant note about Mr. Wadler, you would put it in a little file you had in your office called "Sandy Wadler." Didn't it say that?
A He had a personnel file that I kept in my office.
Q That's not my question.
A Okay.
Q HR has a personnel file, doesn't it?
A Yes.

Q We're not talking about the HR file.
A Yes.
Q We're talking about this file that you keep in your office for the people who report to you. And one of those was Sandy Wadler. Right?
A Yes.
Q And his name is written on the file, isn't it?
A Yes.
Q And if there's a note that you consider to be significant, you put it in the file and keep it for important recordkeeping purposes. Right?
A Yes.
Q And Ms. Tsingos was someone who had asked herself to be able to send people to China as part of this response to red flags, right?
A Asked to send people to China?
MR. POTTER: Your Honor, can we get a foundation as to time?
MR. WAGSTAFFE: Any time, right now, Your Honor.
THE COURT: If it was in response to the Norton report.
THE WITNESS: Yeah. I don't remember her specifically asking to send people to China. It was in her purview as the -- as the chief financial officer, to do that. She didn't need my permission.
BY MR. WAGSTAFFE
Q She asked you for permission, and you turned her down.

Isn't that right, sir?

A No. That's not correct.

Q You certainly didn't authorize her to fly, did you? She asked -- she wanted to fly in a particular class of business because of her medical condition, and you told her no. Isn't that right?

A She never asked to fly to China.

Q That's not my question, sir. My question is: With respect to Ms. Tsingos, due to a medical condition with respect to her veins, she asked to fly on a carriage of passage that would be a little more expensive, and you told her no. Right?

MR. POTTER: Objection, Your Honor, relevance.

THE COURT: Overruled.

THE WITNESS: So, I'm not sure I should be discussing somebody else's medical problems.

THE COURT: Answer the question, please.

THE WITNESS: So, ask the question again?

THE COURT: The question is --

MR. WAGSTAFFE: Thank Your Honor.

THE COURT: -- she asked you for permission to fly in a higher class, and you turned her down. That's the question.

THE WITNESS: She's allowed to fly, just in -- in the same class that everybody else is, under the same conditions.

BY MR. WAGSTAFFE

Q She told you she had a condition with her veins that required her to fly in a more comfortable class, and you turned her down for economic reasons. Isn't that right?

A Yes.

Q And you did so because you wanted to save a little money for the company. Isn't that right?

A No.

Q You did so because you didn't care about her medical condition. You wanted to have her be treated like everybody else. Isn't that right?

MR. POTTER: Objection, Your Honor, relevance.

THE COURT: Sustained.

MR. WAGSTAFFE: Okay. Let's turn to Exhibit 86.

(Document displayed)

BY MR. WAGSTAFFE

Q If you could turn to Exhibit 86, sir.

(Request complied with by the Witness)

A Okay.

Q You certainly recognize what this is, don't you?

A Yes.

Q This is a performance review for Mr. Wadler, right?

A Yes.

Q And you told us at deposition it was the performance review for the 2011 time period. Do you recall that testimony?

A Yes.

Q Okay. But in fact, it was delivered to him on December 20th of 2012. Right?

A Yes.

Q That was the first time there was ever a review that addressed, as it's described here, 2011. Right?

A Yes.

Q We were at the end of the next year, and now you're finally getting around to delivering his personnel review, and give it to him? Is that right?

A Yes.

Q And that was at the press of business, you couldn't have an earlier review to do things?

A Yes.

Q I mean, isn't it true that you routinely during this year would deliver late reviews because you didn't want to have the raises take place until later, even if you could save the money? Isn't that right?

A No.

Q Okay.

MR. WAGSTAFFE: If you could go to the second page, the signature.

THE WITNESS: I mean, you have to understand, my father died this year.

MR. WAGSTAFFE: No question pending.

THE COURT: I appreciate that this sounds like a conversation.

THE WITNESS: I'm sorry. I'm sorry.

THE COURT: But it's not. Just answer the question. And then there will be other questions.

THE WITNESS: Yes.

(Document displayed)

BY MR. WAGSTAFFE

Q That's your signature where it says "Manager Signature," right?

A Yes.

Q And the date is correct, 12/20/12. Right?

A Yes.

Q And that's Mr. Wadler's signature, isn't it?

A Yes.

Q That's accurate, that's an accurate statement that your conversation with him and handing him this form took place at the end of the year in 2012. Right?

A Yes.

Q And if you will go back to first page.

(Document displayed)

MR. WAGSTAFFE: Thank you Ms. Guzman. And go to the date, the one beneath that, if you could.

(Document displayed)

MR. WAGSTAFFE: Thank you.

BY MR. WAGSTAFFE

Q So you wrote down 8/1/2011. Right?

A Yes.

Q That was just an error. That was actually -- you actually meant to type 8/1/2012, didn't you?

A Yes, I believe so.

Q Are you telling us that is the date you finished working on the review?

A Um, most likely.

Q And by the way, you waited five more months or so to give it to him?

A Yes.

Q Okay. And was there some problem with a delay here for giving a review to someone who is four doors down?

A Um, the press of business.

Q Okay. To give a review to your general counsel?

A Yes.

Q Isn't one of the reasons that you didn't give it to him is because he was doing such a good job, you didn't feel the need to have any intervening personnel reviews? Isn't that really what was going on?

A We -- we met every week.

Q Listen to my question: Isn't one of the reasons you didn't need to give him this until the end of December is he was doing such a good job, in your mind, that there was nothing to be said that was negative to him, in writing, as part of the review process. Right?

A I wouldn't necessarily agree with that.

Q Okay. And when it says -- where it's supposed to be 2012, you'll agree with me, won't you sir, that when somebody has a personnel review a year later, you -- it was your sense that Mr. Wadler knew you were talking about the whole year, including 2012. Right?

A No.

Q So it was your sense that this meeting at the end of 2012 was getting a time machine, and talking about only what happened in 2011? Is that right?

A That's typically the way we approached it, yes.

Q And I take it, then, you assiduously avoided, in this entire discussion that day, talking about anything that happened in the entire 2012 year. Is that right?

A We may have discussed things that happened in the 2012 year.

Q Of course. Someone you see every day, who you're talking about things, and you're giving a personnel review, you meant to communicate to him: This was a snapshot in time as of December, 2012.

That's what was going on in this discussion, wasn't it?

A This was a review for 2011.

Q I understand. That's not my question. As you talked to each other, man to man, supervisor to general counsel, you were talking about things that had occurred in 2012, because the snapshot in time for your evaluation really was the day you gave

it to him. Isn't that right?
A So, these items were items from his 2011 year that we're talking about.
Q All right. Let's take a look at it. Let's take a look at No. 1.
(Document displayed)
Q See No. 1?
A Yes.
Q It says that Sandy took the lead role -- it was a shareholder derivative suit, and the suit was admitted without prejudice. Right?
A Yes.
Q That was major benefit to the company to have a shareholder derivative suit dismissed, dismissed without prejudice. That was big, wasn't it?
A It was a benefit, yes.
Q No, it was big. Tell the jury what a shareholder derivative suit is.
A So this is kind of a complicated area of the law in which a -- a shareholder on behalf of the -- on behalf of the company, sues the business board. It is a very convoluted area of the law.
Q Well, convoluted, but very dangerous for companies, right?
MR. POTTER: Objection, vague.
THE COURT: Overruled.

THE WITNESS: You know, I'm not a -- I can't -- I can't -- I'm not qualified to --

BY MR. WAGSTAFFE

Q You're the CEO. You're the captain of the ship. Wasn't that one of the jobs you were supposed to be involved with, was to assess litigation risk? With the assistance of those who work with you?

A Yes.

Q Okay. And this was a significant risk in this lawsuit. Wasn't it?

A This was a significant risk?

Q Sure. This company got sued for shareholder derivative liability. That was a risk, wasn't it?

A It was a risk, yes.

Q And Mr. Wadler was getting praised by you in December of 2012 for his work in getting it resolved. Right?

A Yes.

Q And you gave him a 3.3. Do you see that? For that excellent work. Right?

A Yes.

Q You're kind of a hard grader, aren't you?

A I am.

Q 3.3 was a grade that was pretty darn good for this excellent work he had done. Right?

A Yes.

Q We'll go to No. 2.
(Document displayed)
Q You communicated through writing and in person to Sandy Wadler that day in December, 2012, that what he had done with respect to the completion of the QuantaLife acquisition was well done and well structured. Right?
A Yes.
Q And this was -- this was just superb work, wasn't it?
A Yes.
Q I mean, in your hard grading, you gave him an A++ at 4, didn't you?
A Yes.
Q Let's go to No. 3.
(Document displayed)
Q Could you read No. 3, what you typed in to this form, into the record, sir?
A Yes. (As read)
"A lot of work has been done to organize and to do a first round of training with high risk groups around the world. Employee issues have been dealt with."
Q And what is the title of this box as to what you were talking about, right next to the No. 3? Could you read that into the record?
A What is the title of this box?
Q Yeah, right next to 3.

A Oh, okay.

"Work to resolve our outstanding FCPA issue."

Q And this is the -- this was the issue that you're telling us that members of the board wanted Sandy fired for in 2010?

A Yes.

Q So by the end of 2012, Sandy Wadler, in your mind, had done an outstanding job in resolving those FCPA issues. Isn't that right?

A Yes.

Q And you gave him a 3.4. High grade. Right?

A Yes.

Q I mean, you heard this stuff about 3.4 is the midway between 2 and 5, but in fact, for you, that was a very high grade. Wasn't it?

A It's a decent grade, yes.

Q Decent grade. It was a very high grade, wasn't it?

MR. POTTER: Objection, Your Honor. (Inaudible)

THE WITNESS: It's a decent grade.

THE COURT: Overruled. He's answered it.

MR. WAGSTAFFE: Let's go to No. 4.

BY MR. WAGSTAFFE

Q Now, you told him that you wanted to develop a more proactive approach to assure that Bio-Rad is up to date with respect to new laws and regulations. Right?

A Yes.

Q You certainly didn't mean the FCPA there, did you?
A No.
Q Because the FCPA wasn't new. It had been around for a long time, right?
A Correct.
MR. WAGSTAFFE: Let's go, if we could down to -- let's go to No. 5.
(Document displayed)
BY MR. WAGSTAFFE
Q Now, here, you wrote (As read):
"Help to recruit a new compliance officer and support their integration to Bio-Rad."
Do you see that?
A Yes.
Q In fact, you wrote "Done" next to that because by the time you got around to giving this to Sandy, it was done. Right?
A Yes.
Q So in fact, you were trying to keep somewhat live time in this report as you typed it in your computer, because you had done -- and he did that, right? Got it done?
A He -- he was involved in the process, yes.
Q Okay. Now, if you can go down the next -- the whole thing -- from the page there.
(Document displayed)
Q You see this next section, sir. Could you tell the jury

what -- you can probably read what is in the beige, you having done this many times. What's in the beige there?

A I'm sorry?

Q What's in the beige? Read the words -- I say "the beige," I mean the -- what am I thinking of?

THE COURT: Shaded.

MR. WAGSTAFFE: Shaded. Thank Your Honor. Language-deficient.

THE WITNESS: Okay. It's a little bit hard to read, but I think it says "Core Leadership Competencies."

THE COURT: Okay.

BY MR. WAGSTAFFE

Q And in that, you were evaluating the things that were in the form, such as: Did he employ financial acumen, exercise insightful judgment, think strategically, et cetera. Do you see that?

A Yes.

Q That was in the template form, wasn't it?

A Yes.

Q But it was a guide to you, that everything comes below is your evaluation of those topics. Right? That's why it's in the template. Right?

A Right. That you would make comments on these items.

Q Okay. So as we go through this section, if you will, telling Mr. Wadler and keeping -- this is going to make it to

his personnel file, isn't it (Indicating)?
A Yes.
Q Oh, sure. Regardless of the notes you keep in your office, the personnel file would include the personnel review. Right?
A Yes.
Q Okay. (As read)
"Sandy provides valuable counsel to the company on a variety of matters. In addition, he's the chief strategic negotiator for major Bio-Rad agreements."
Do you see that?
A Yes.
Q Again, A+ for this one. Right? 3.7?
A That's a good score.
Q It's among the highest scores you gave out in 2012 to Sandy Wadler, wasn't it?
A No.
Q Okay. Among the highest?
A Among the highest.
Q Correct. Let's go down the next one with the shaded -- I've got my word -- and what's below it.
(Document displayed)
Q You're trying to tell Sandy what was going well, overall. Right?
A Yes.
Q And you talked about what's in this box, didn't you?

A Yes.
Q And you wrote (As read):
"Sandy continues to be the MVP on the negotiation front. He has taken to heart the need to improve our compliance focus, and has dedicated board resources to get up to speed."
Do you see that?
A Yes.
Q And, I mean, I'm kind of a Steph Curry guy. What does "MVP" stand for?
A Most valuable player.
Q And that's what you meant to communicate, that Sandy Wadler was the most valuable player. Right?
A With respect to these negotiations, yes.
Q And you believed that to be true in December of 2012 when you gave him this review, isn't that right?
A Yes.
Q And it was still true, even as of the time you terminated Mr. Wadler. Isn't that right?
A Probably.
Q I mean, he was the most valuable player in negotiations. Isn't that right?
A Yes.
Q And you wrote that he's the chief strategic negotiator for major Bio-Rad agreements. Right?

A Yes.
Q You trusted him?
A Yes.
Q He was good at his job.
A Especially this part, the negotiation front.
Q Overall, he was good at his job. Right?
A He was a good general counsel, yes.
Q And he did this part of his job really well, didn't he?
A Yes.

MR. WAGSTAFFE: Let's go to "Areas for Improvement," the next -- top of the next page.

(Document displayed)

BY MR. WAGSTAFFE

Q Now, areas of improvement is the section where you put anything in there you think you need to say if there's problems you identify. Isn't that the place you do it?
A Yes.
Q And you wrote (As read):

"While the legal team always seems to be working hard..."

That was true. The legal team was working hard, weren't they?
A Yes.
Q And they didn't have any lack of work, as you understood it, there. They were very busy.

A Correct.
Q In fact, you were reflecting your own sense that they were almost overworked. Isn't that right?
A They -- what I said here is they seem to be working hard.
Q In 2012, Mr. Wadler, on more than one occasion, had said to you words to the effect: We're understaffed. You've got to spend some money and add some new lawyers.
He told you that, didn't he?
A Probably.
Q And you said no. Right?
A I can't recall that.
Q Well, you said no because you didn't want to spend the money on adding lawyers to his team. Right?
A I don't -- I don't recall the conversation.
Q You said (As read):
"Around the company, the image of Legal could be improved."
Do you see that?
A Yes.
Q You were talking about the work they did as lawyers. You weren't talking about Sandy Wadler personally there, were you?
A Correct.
Q And, it says:
"We need to better understand the source of discontent and find a cure."

That -- you know, that Legal was getting -- had kind of a bad rep. Right?

A Yes.

Q But you certainly didn't think that was some serious problem for Sandy Wadler personally, did you?

A Well, he was in charge of the Legal Department, yes.

Q You said (As read):

"We need to better understand the source of discontent."

You were trying to say: There are some people out there who seem to be a little discontented. Let's go figure it out.

Wasn't that what you are saying?

A Yes.

Q You certainly weren't saying to Sandy Wadler: You are a terrible person as you interact.

You weren't saying that, were you?

A No.

Q You weren't trying to say that he was -- that he was having outbursts with people, were you?

A No.

Q You weren't trying to say that he had -- in December, 2012, that he exhibited extremely bizarre behavior, were you?

A No.

Q Okay. And you weren't trying to say he's yelling at everybody. That wasn't part of this review, was it?

A No.
Q Okay. Not a word in there about problems with the 10-K, right?
A Correct.
Q Not a word in there about Life Tech, right?
A Correct.
Q Okay.
MR. WAGSTAFFE: Let's go to the improvement section -- excuse me, to the "Objectives."
(Document displayed)

BY MR. WAGSTAFFE

Q So this is the section where you say at this moment in time, right above your dated signature of the 12th -- the 20th of December: Here's what we are looking at going forward. You were talking. You weren't having some weird: Let's look forward from the end of 2011, were you?
A Well, some of these are issues that, in fact, I think we solved in 2012.
Q I understand. My question is you weren't trying to communicate to him in December, 2012: Hey, looking forward, let's talk about what you did eight months ago.
That was not your intention, was it?
A Part of it is.
Q What you were trying to do is saying from this snapshot in time, when we are sitting down talking: Here's what I would

like you to do. Right?

A No.

Q This was a template document, right?

A Yes.

Q It was on your computer screen. Right?

A Yes.

Q And you would fill it out. Right?

A Yes.

Q Could have changed it five minutes before you met him? Right?

A Yes.

Q Could have -- if these objectives were now things that were not -- no longer relevant, you could have aced it out and put something new in, right?

A Yes.

Q The purpose of this personnel review in this section was forward-looking from the day you gave it to him. Right?

A No.

Q All right. In any event, you gave him --

MR. WAGSTAFFE: If you can keep that up for a second, thank you.

(Document displayed)

BY MR. WAGSTAFFE

Q These are the things that you told him to keep an eye on. Right?

A Yes.
Q And, nothing in there about the FCPA, right?
(Witness examines document)
A No.
Q Nothing in there about the way Sandy behaved, right?
A No.
Q Let's look at what happened as of December 20th, 2012. You can go to your handwritten notes.
(Document displayed)
Q You decided, as of December 20th of 2012, you were going to give him a 3 percent increase as a merit raise. Right?
A Yes.
Q And you decided, to be fair, since you had delayed getting this to him, that you would make it retroactive to March. Right?
A Yes.
Q To save some money for the company, you didn't make it retroactive to January, did you?
A The -- the system we have is that the increases are effective in March.
Q All right. And you actually changed his title from vice-president to executive vice-president.
A Yes.
Q You were doing that to give him a recognition of elevated title. Isn't that right?

A This was -- the answer is yes.
Q Okay. Because you were elevating his title. This wasn't just everybody's getting it, and it's no big deal. You were telling Sandy Wadler he's getting a raise; it's retroactive. And he's getting an elevated title to executive vice-president. Right?
A No.
Q All right.
MR. WAGSTAFFE: If we can have 122:9 to 12? Do you have that? 122:9 to 12.
THE COURT: Any objection?
MR. POTTER: No objection.
THE COURT: Go ahead.
(Portion of video deposition played, not reported)
BY MR. WAGSTAFFE
Q Mr. Schwartz, if we take a snapshot of December 20 of 2012, at that point in time, Sandy Wadler, in your mind, was doing an excellent job. Right?
A Yes.
Q And Sandy Wadler at that point in time was giving all these -- you were trying to communicate to him in this review (Indicating): You are doing fabulous.
A That he was doing a good job.
Q Fabulous.
A A good job.

MR. POTTER: Objection, Your Honor.

BY MR. WAGSTAFFE

Q Okay. Did you use the word "fabulous" during the discussion?

A No.

Q But you felt that he was doing a fabulous job, didn't you?

A I --

THE COURT: Asked and answered.

THE WITNESS: I thought he was doing a good job.

MR. WAGSTAFFE: Very good. Thank you, Your Honor.

Your Honor, I'm at an appropriate point, if I could do that?

THE COURT: Yeah.

MR. WAGSTAFFE: Thank you.

THE COURT: So, ladies and gentlemen, we are going to take our lunch break. Let's see. What time is it?

So 1:15, please be back here and we will start again. Thank you very much.

(Jury excused)

(The following proceedings were held outside of the presence of the Jury)

THE COURT: All right, thank you. The jury is not present. You had one evidentiary issue.

MR. ASPERGER: So, Your Honor, there are a number of exhibits, and I can give you the numbers. 349, 350, 351, 352, 353, 354, 355 and 356. And those are 10-Ks and proxy statements.

So, Your Honor, those are inadmissible, as well as Mr. Wagstaffe's questions about the company making billions of dollars. Because I'm assuming at this point, given the way that he is raising those questions, he is intending to make that argument as part of the damages case.

And the case law is very clear that the only thing that is admissible is net profits and net figures, and those big numbers are prejudicial. Their prejudicial impact outweighs their probative value. And the Ninth Circuit has clearly stated that shouldn't be admissible.

And I can give you --

THE COURT: It's already been in evidence, so --

MR. ASPERGER: Well, that is in evidence, but it's going to come up in two ways. One is with these documents, and the other is what arguments he can make in closing.

And that's -- it's clear now to us that he's using it for an impermissible purpose. And so we would ask that the Court not admit these documents, and restrict him to what is permissible under Ninth Circuit law.

THE COURT: Okay. Motion denied.

Anything else? Yeah.

MS. KRAMER: One small issue, Your Honor.

When Mr. Wadler was on the stand, he blurted out that Bio-Rad filed its 10-K late in 2014. And that directly actually violates a motion in limine ruling that Your Honor made regarding Ernst & Young, and the reasons Ernst & Young was terminated. That's not supposed to be mentioned, that they were terminated.

And the reason the 2014 -- first of all, Mr. Wadler wasn't at the company then. But the reason it was filed late is because the company had to hire new auditors. And we were not supposed to be getting into that.

So, could you strike the testimony, Your Honor?

THE COURT: Strike the testimony they filed it late?

MS. KRAMER: Yes, in 2014. Because I don't want Mr. Wagstaffe to be arguing in closing that this is a pattern at the company.

MR. WAGSTAFFE: Your Honor, I won't be arguing that unless they open the door to it. I will not argue.

THE COURT: Great. That's your answer.

MS. KRAMER: Thank you.

THE CLERK: Court stands in recess.

(Whereupon at 12:19 p.m. proceedings were adjourned for noon recess.)

P R O C E E D I N G S

JANUARY 19, 2017 1:16 P.M.

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(Proceedings resumed pursuant to noon recess.)

(The following proceedings were held outside of the presence of the Jury)

THE COURT: Okay. Please remain seated.

Are we ready to get the jury?

MR. POTTER: Yes, we are, Your Honor.

MR. WAGSTAFFE: Yes, Your Honor.

THE COURT: Okay.

MR. WAGSTAFFE: I can't hear much, very well today. Water in my ear in the shower.

THE COURT: That's a handicap for a trial lawyer. Can't hear anything.

MR. WAGSTAFFE: Nah, lipreader.

(The following proceedings were held in the presence of the Jury)

THE COURT: All right. Welcome back.

Mr. Wagstaffe, proceed.

MR. WAGSTAFFE: Thank you, Your Honor.

DIRECT EXAMINATION RESUMED

BY MR. WAGSTAFFE

Q Mr. Schwartz, good afternoon.

A Good afternoon.

Q On February 20th of 2013, Mr. Drapeau informed you that Mr. Wadler had made a report to the Audit Committee concerning potential wrongdoing in China. Isn't that right?

A Yes.

Q And then, two days later, you suggested that Mr. Wadler be placed on administrative leave. Isn't that right?

A I -- I did send a note to Colleen Corey, that I was considering that.

Q Two days later, after you learned on February 20th that Mr. Wadler had made a report to the Audit Committee about China, you communicated with the head of HR that you were considering placing Mr. Wadler on administrative leave. Correct?

A Yes.

Q Could you turn to Exhibit 27, sir.

(Request complied with by Witness)

Q You know what Exhibit 27 is, don't you, sir?

A Yes. It's the letter that you -- the email that you are referencing.

Q Well, that is an email that was kept in the ordinary course of your company's business, wasn't it, in your email system?

A Yes.

MR. WAGSTAFFE: Your Honor, I offer Exhibit 27.

MR. POTTER: No objection, Your Honor.

THE COURT: It is admitted.

(Trial Exhibit 27 received in evidence.)

MR. WAGSTAFFE: Blow -- close to the top. Thank you.

(Document displayed)

BY MR. WAGSTAFFE

Q This is an email that you sent to Colleen Corey, on 2/22/2013, subject matter "Your advice." Do you see that?

A Yes.

Q And tell us who Colleen Corey was at that time.

A She is the director of Human Resources.

Q At this point in time, as far as you know -- and I want to focus on the personnel file, not your note file in your office. As far as you know, at this point in time, there is no document in Mr. Wadler's personnel file more recent than the December 20th, 2012, employment review. Isn't that right?

A I think that's correct.

Q Okay. Nothing on there between December 12th, what we just looked at before the break, and this email (Indicating) in any way documents anything about Mr. Wadler in the personnel file, as far as you know. Isn't that right?

A Yes.

Q And you sent this email to Ms. Corey because you wanted to communicate with HR. Isn't that right?

A Yes.

Q And as far as you're aware, there is no other writing that's been produced in this case of any kind, email or otherwise, of any communications you had with Ms. Corey about Mr. Wadler between December 20th of 2012 and February 22 of 2013. As far as you know. Isn't that right?

A As far as I know.

Q That's right. So -- and you called Mr. Wadler's behavior "a little bizarre." Didn't you?

A Yes.

Q And what you were referring to when you called his behavior "a little bizarre" two days after learning he went to the Audit Committee, was that he went to the Audit Committee. Isn't that right?

A No.

MR. WAGSTAFFE: Your Honor, can we play 237, Line 15 through 238, Line 4?

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q Mr. Schwartz, that was not honest testimony. You, in fact, did know by the 22nd of February that two days earlier, Sandy Wadler had, in fact, made a report. Correct?

MR. POTTER: Objection to the form, Your Honor. Compound.

THE COURT: Overruled.

THE WITNESS: To the best of my recollection at that time, I -- I wasn't aware of that.

BY MR. WAGSTAFFE

Q Well, you read the deposition transcript to see if you could make any corrections. When you did that, you didn't make any corrections to the testimony we just heard, did you?

A No.

Q In fact, you knew by the time you made the corrections that you signed under penalty of perjury, you knew, did you not, that in fact this was inaccurate (Indicating)? You had learned it two days earlier. Isn't that right?

A Yeah. You know, as the facts have rolled out, it looks like that. Yes.

Q That's not my question. We just heard sworn testimony. Right? You raised your right hand at the beginning of the deposition, too, didn't you (Indicating)?

A Yes.

Q Just as you did today. Right?

A Yes.

Q And you had a chance not only to give the testimony and to be so prepared for it, but -- and to review documents, but also to read it after the fact. Right?

A Yes.

Q And when you read it after the fact, you made no correction to your sworn testimony here that you didn't know that Mr. Wadler had gone to the Audit Committee. Isn't that right?

A That's correct.

Q And in fact, you learned that he did go to the Audit Committee. And you'd learned that two days before the email. Right?

A It would appear so.

Q When you say "It would appear so," you know it's so. That's what you just told us, right? That Mr. Drapeau told you. That's not appearing. You know it, right?

A Yes.

Q And you also know that Ms. Tsingos -- who's Christine Tsingos?

A Christine Tsingos is the chief financial officer.

Q And you know that she has testified in this case that she also became aware that you had learned of this two days before you wrote this email, Exhibit 27. Right?

MR. POTTER: Objection to form, Your Honor.

THE COURT: I'm not really sure what you're asking. Would you rephrase that?

BY MR. WAGSTAFFE

Q You learned that Ms. Tsingos was also informed by Mr. Drapeau that -- of the Audit Committee report two days before this email. You learned that, didn't you?

MR. POTTER: Same objection, Your Honor.

THE COURT: Overruled.

MR. WAGSTAFFE: Okay.

THE WITNESS: I don't -- I don't recall that.

BY MR. WAGSTAFFE

Q Okay. Mr. Wadler had not done anything else immediately prior to sending you the email that caused you to send it. Right?

There was nothing he had done that caused you to send this email?

A Yes.

MR. WAGSTAFFE: If we could Play 233:19 to 22.

Am I in the way here?

THE COURT: Go ahead.

MR. POTTER: No objection, Your Honor.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

MR. WAGSTAFFE: And then could we play 233:23 to 234:1?

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Okay. Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q At your depositions for which you were prepared, you had no recollection of anything Mr. Wadler had done between December 20th of 2012 and the time you wrote this email (Indicating) on the 22nd of February, that caused you to believe he was acting erratically. Prior to that email. That's what you told us in your deposition. Isn't that right?

A I would like to look at that once more.

THE COURT: Well, you can --

THE WITNESS: I'm not sure that is a correct characterization.

MR. WAGSTAFFE: Your Honor, I'm happy to play that again. I want to make sure this witness has every opportunity. 233:23, to 234:1.

THE COURT: Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q Mr. Schwartz, you understood you were being asked to tell us what it was that Mr. Wadler was doing that caused you to send an email suggesting your general counsel be considered for administrative leave. And at your deposition, you couldn't recall anything. Isn't that right?

A Right.

Q Okay. Yet, in your email to the head of HR, you said that he was acting a little bizarre. Is that right?

A Right.

Q Okay. You did not discuss any of your concerns with Mr. Wadler before sending this email, did you?

A Um, not that I recall.

Q So as you sit here now, you have no memory that you ever told Mr. Wadler anything at all about saying: Hey, I'm going to have to go to HR because you are acting so bizarrely.

You never said that to him, as you just told us. Right?
A Correct.
Q So other than the fact Mr. Wadler had submitted a report to the Audit Committee, early February, that you learned about on February 20th, there was nothing else that motivated this email, as far as you can recall, as you sit here right now. Correct?
A Sandy was -- seemed to be behaving a little bit strangely.
Q You didn't tell us that in deposition, did you?
A No.
Q You didn't tell us in deposition, despite the preparation, that -- what you just said, that was not the answer you gave under oath, was it?
A Correct.
Q You understood -- you understand, do you not, that this is very important in this case as to the reasons why you decided to send an email to the head of HR saying that your general counsel was acting a little bizarre. Right?
A Yes.
Q You certainly would agree with me, would you not, sir, that the review that you prepared in December of 2012 in no way suggested that Mr. Wadler was acting bizarre. Isn't that right?
A That's correct.
Q This is the first time in Mr. Wadler's employment, with respect to looking at 2012 and 2013, you ever discussed with Ms. Corey putting Mr. Wadler on administrative leave. Correct?

A Um, yes.

Q Okay.

MR. WAGSTAFFE: Could we play 235:12 to 24?

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Okay. Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q And you never told Mr. Wadler you were considering putting him on administrative leave, correct?

A Correct.

MR. WAGSTAFFE: If we would could play video, Your Honor, 84, Lines 2 to 15.

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q Mr. Schwartz, you -- as soon as you learned of the audit report that Mr. Wadler had made, you immediately thought he was a whistleblower, didn't you?

A It -- it was not clear at that time.

Q Well, that's what you wrote in or around that time, that you thought he was a whistleblower. Yes or no?

A I --

Q Just yes or no.
A I don't know.
Q You don't know. As you sit here now, you have no memory of whether you ever referred to him as a whistleblower, or used that term about him, to anyone?
A I'm sure it came up in a conversation somewhere.
Q Well --
A But I don't remember the exact -- the exact time or date.
Q Well, it came up in conversations in this very time frame, did it not, within a week or two? That is, that you thought of Mr. Wadler as a whistleblower. Correct?
A I know that other people stated that he thought -- they thought he was a whistleblower.
Q And you did, too, didn't you?
A I don't -- I don't recall.
Q It is true that Mr. Drapeau told you that he believed that Mr. Wadler was a loose cannon and a whistleblower threat. He told you that, didn't he?
A That sounds familiar.
Q okay. And he told you that in this very context of late February, early March. Isn't that right?
A Yes. I think -- I believe so.
Q You understood, did you not, that the Audit Committee was supposed to be independent. Correct?
A Yes.

Q The Audit Committee was kind of the watchdog of what the family-owned members of the Board of Directors were doing. Right?

A Could you ask that question again?

Q You knew that the Audit Committee, one of its functions was to independently -- independently investigate misconduct in the company. Right?

A Yes.

Q And independently to evaluate the -- the accounting information. Right?

A Yes.

Q They weren't supposed to be coming to you and giving you the inside word, were they?

A I don't know.

Q Well, you understood that when it came to their independent investigation, that that was one of the things that they were supposed to do independently. Right?

A Yes.

Q You came to learn, when you read that memo, that Mr. Wadler was expressing concerns about senior management. Right?

A Yes.

Q Did you think he was talking about you?

A It could have been.

Q Did you think he was talking about you?

A Don't know.

Q All right, but you thought it was a possibility.

MR. POTTER: Objection; calls for speculation.

THE COURT: Overruled.

THE WITNESS: It's always a possibility.

BY MR. WAGSTAFFE

Q And you thought that therefore, the Audit Committee might be looking at something you did. Correct?

A It's always a possibility.

Q Didn't you think it was entirely inappropriate for you to be having a conversation with Mr. Drapeau, who was the chair of the Audit Committee, about what was presented at the Audit Committee? Didn't you think so?

A I don't know. Mr. Drapeau was having a conversation with me.

Q Well, did you say to him: Hey, Lou, this is -- this may involve me; we shouldn't be talking about that?

Did you say words like that to him?

A No.

Q So what he told you in this conversation was words to the effect that: I think Sandy is a loose cannon and a whistleblower.

That's what he told you, isn't it?

A Yes.

Q Now, you decided to terminate Mr. Wadler's employment with Bio-Rad in March or April. That's when you made the decision.

Correct?

A That was the beginning of the decision-making.

Q Not my question. That's when you decided -- you decided to terminate Mr. Wadler's employment with Bio-Rad in March or April. True?

A False.

MR. WAGSTAFFE: May we play, Your Honor, 17, Lines 3-11? Thank you.

THE COURT: Any objection?

MR. POTTER: No objection.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q It was truthful testimony, was it not, sir, that the decision to fire Sandy Wadler was one that you came to on your own. Correct?

A Yes.

Q You're the decision-maker, right?

A I was his supervisor, yes.

Q And as the captain of the ship, it wasn't the Board of Directors, it wasn't Lou Drapeau, it was you who decided to fire him. Right?

A He -- he reported to me, yes.

Q And you decided to fire him in March, and maybe early April. Right?

A That was when I first considered that. Yes.

Q And even though you had decided to fire him, you didn't want to do so during the FCPA investigation involving China. Isn't that right?

A Um, we were -- we started -- well, we were still in the middle of this investigation. And it would be nice to see what the result of that was.

Q My question, though, is: Although you decided to fire him, you wanted to hold off its implementation until you got through the FCPA. Right?

A I -- yes.

Q In fact, Mr. Drapeau wrote a handwritten note on March 4th, quoting you as saying: Norman is entirely frustrated with Sandy but believe he must stay in place until the FCPA settlement is final.

You knew that he said that to you, didn't he?

MR. POTTER: Objection, compound, lack of foundation.

THE COURT: Overruled.

THE WITNESS: Um --

BY MR. WAGSTAFFE

Q You said that to him, didn't you?

THE COURT: Do you mean: Did he say that to you?

MR. WAGSTAFFE: Yeah, let me try it again, Your Honor. I might have switched.

BY MR. WAGSTAFFE

Q You told -- you told Mr. Drapeau, on or about March 4th,

that you were entirely frustrated with Sandy, but you believe he had to stay in place until the FCPA settlement is final. Right?
A Until, I think, we completed the investigation.
Q You said that to Mr. Drapeau on March 4th, didn't you?
A Words to that effect, most likely.
Q And you had already decided at that time to fire Mr. Wadler. Right?
A We were -- that -- yes. We were beginning that -- to go down that path.
Q You certainly have no reason to disbelieve Mr. Drapeau's notes said that you had said that. Right?
A Correct.
Q So you're agreeing, are you not, sir, that the decision to fire Mr. Wadler was yours, correct?
A At the end of the day, yes.
Q You understand that you submitted a declaration to the Department of Labor, under penalty of perjury, in which you wrote that the board had instructed you to fire Mr. Wadler. You know you wrote that, didn't you?
A Yes.
Q And that was false testimony. The board did not instruct you. You were the one who decided to fire him. Isn't that right?
A Well, they did instruct me.
Q Listen to my question. It wasn't that the board instructed

you. It was that you went to the board and sought sort of a -- your own green light. Right?

A No.

Q The decision was yours, and there was no instruction where you were just following the instruction. Isn't that right?

A Correct.

Q And you understand -- is your mother on the board?

A Yes.

Q And what's her first name, may I ask?

A Alice.

Q And how old is your mom?

A She's in her nineties.

Q And you understand that your mother has no memory of having made a decision to -- or -- to fire Sandy Wadler. You know that, don't you?

A You'll have to ask her.

Q Well, you don't know that that's her testimony in this case?

A I don't.

Q And how about Mr. Hillman? He was on the board, wasn't he?

A In 2013? I don't believe so.

Q All right. Are you aware that he's testified in this case that he has no memory of giving you instructions or of deciding to fire Sandy Wadler?

MR. POTTER: Objection, Your Honor; argumentative and form.

THE COURT: Overruled.

THE WITNESS: I don't recall.

BY MR. WAGSTAFFE

Q Let's focus on -- let's focus, let's go back to Exhibit 27. Thank you.

(Document displayed)

BY MR. WAGSTAFFE

Q In that first sentence, you were telling the head of HR that: You may want to put Sandy on administrative leave, for which I need your advice and help.

Correct?

A Yes.

Q That was -- that would be a personnel action, right?

A Yes.

Q Okay. And ultimately, you had decided not to put him on administrative leave. Is that right?

A Right.

Q Okay. Is that because the concerns you had as expressed in this email were taken care of?

A Um, no.

Q Well, certainly, if you thought someone was a threat, a physical threat in the office, you would have him immediately put on administrative leave, wouldn't you?

A Yes.

Q And you'd follow your rules and procedures for HR, and give notice, and give the details. Right?

A Yes.

Q And you didn't do that, did you?

A No.

Q That's because there were no acts by Mr. Wadler during this time frame that is leading up to your email on February 22nd, and certainly through the next few weeks, there were no acts that caused you to believe he needed to be put on administrative leave. Right?

A No.

Q Is that right?

A No.

Q You thought he should have been put on administrative leave?

A I was considering whether he should be put on administrative leave because, as this says, he seemed to be acting a little bizarre.

Q You've just told us you have no memory -- you told us in your deposition you had no memory at all of what it was prior to February 22nd in which he was acting bizarrely. Is that right?

MR. POTTER: Objection, misstates the testimony.

THE COURT: Sustained.

BY MR. WAGSTAFFE

Q Do you have a memory of something that happened before February 22, that's documented in the HR file, about Mr. Wadler acting bizarrely?

A No.

Q Do you have a memory of writing a note to Mr. Wadler, and telling him: You have been acting bizarrely, prior to February 22nd?

A No.

Q Did you go to HR prior to this email, and communicate to HR that he's been acting bizarrely?

A We had some conversations about that.

Q Prior to February 22nd? That's your testimony?

A Yes.

Q All right. Now, after February 22nd, you continued to allow Mr. Wadler to serve as general counsel. Right?

A Yes.

Q And you didn't put him on any performance improvement plans, did you?

A No.

Q You understood that the company had a performance improvement plan program, right?

A Yes.

Q Mr. Wadler had been there for 26 years or so, right?

A Yes.

Q And you thought it would be fair, if someone was acting bizarrely, to follow the rules and put him on a performance improvement program, right?

A No.

Q You understood that your performance improvement program or

PIP applied to all employees. Didn't matter whether somebody someone was an executive or not. That applied to all, didn't it?

A Yes.

Q And that was an option available to you, was it not, if you thought he was acting bizarrely, to get him in anger management, or give him notice, right?

A It was an option that was available.

Q You didn't do that?

A No.

Q You then eventually went to the board, itself, right?

A Yes.

Q That was when?

A Went to the board?

Q When did you go to the board to confirm the decision you'd already made to terminate Mr. Wadler?

A I don't remember the exact date of the board meetings.

Q Early April?

A There was a board meeting in early April.

Q Now, Mr. Wadler didn't do anything in April that led to his termination, did he?

A Um, not that I recall.

MR. WAGSTAFFE: If we could play 94:2 to 6.

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Go ahead.

(Portions of video deposition played, not reported)

MR. WAGSTAFFE: And Your Honor, for the record, we got ahead. That was 95:18 to 96:3, that last segment.

THE COURT: Okay.

BY MR. WAGSTAFFE

Q Let's keep going.

Nothing happened in April that in any way caused you to believe that Mr. Wadler should be terminated, right?

A Not that I recall.

Q In terms of his employment status, he's coming to work every day, four doors down, and you have -- and there's nothing from HR that's been given to him at all. Right?

A Correct.

Q So you'd decided to fire him in March or April. And you were going to just not tell him? Is that what you were going to do?

A Well, we were still considering whether he would be terminated or not.

Q You just told us that the board confirmed in early April that he would be terminated. Right?

MR. POTTER: Objection. Misstates the testimony.

THE COURT: Overruled.

You can answer that question.

THE WITNESS: So, I mean, the board, um, the board was --

was again -- was again pushing me to terminate Sandy.

BY MR. WAGSTAFFE

Q Was your mother pushing you to terminate Sandy?

A No.

Q She was on the board, right?

A Yes.

Q Was Mr. Hillman pushing you to terminate Sandy?

A I don't recall.

Q And what was it? Mr. Drapeau and you got together and said "Let's terminate him"?

A It was Mr. Drapeau and some of the other independent members of the board.

Q Tell us, sir, who was it on the board that instructed you, as you said under penalty of perjury, in writing, to terminate Mr. Wadler?

A So, it was a general discussion that we had. I don't know specifically who said what in the meeting.

Q This is a major lawsuit we have here, right, sir?

A Yes.

Q Big impact on the company, potentially?

MR. POTTER: Objection, Your Honor.

THE COURT: Sustained.

MR. WAGSTAFFE: Thank Your Honor.

BY MR. WAGSTAFFE

Q You -- you are sitting here now on this witness stand. Can

you tell us the date of that board meeting?
A No.
Q And can you tell whether it was a regularly-scheduled meeting or a special meeting?
A No, I can't.
Q Can you tell us whether the issue of firing Mr. Wadler was on an agenda somewhere?
A No.
Q Can you tell us, have you looked at any notes about what happened at that meeting?
A No.
Q As the CEO, testifying in this case, have you made any efforts to learn who said what at the meeting?
A No.
Q You don't remember who said what?
A No.
Q Do you remember what was spoken about Mr. Wadler by anybody, as to their reasons why they thought he should be fired?
A No. Not specifically.
Q You walked in, you said "I want to fire him," and they agreed with you. Isn't that what happened?
A No.
Q In fact, did anybody say -- did any of the board members say they had personal experience, and describe their personal experience with Mr. Wadler?

A I don't recall.

Q Didn't you -- did you recall a single board member saying one bad thing about Sandy, other than yourself?

A Yes. I believe some of the other board members were very concerned about his behavior.

Q But you can't tell us, as you sit here now, in this courtroom, what any one of them said. Is that right?

A Not specifically, no.

Q And you can't tell us specifically in this case who said what.

A No.

Q And you can't tell us whether any of these board members independently came to the decision.

A No.

Q They weren't instructing you, sir, were they? What they were doing was acceding or agreeing with you. Isn't that what you came to the conclusion?

MR. POTTER: Objection to form.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. WAGSTAFFE

Q You told the Department of Labor in an employment proceeding after Mr. Wadler was fired, under penalty of perjury, that you -- that the board instructed you, because you wanted to give the impression it wasn't you but the board independently decided.

Isn't that why you used the word "instructed"?

A No.

Q Mr. Wadler didn't do anything in May of 2013 that led to his termination, right?

A Not that I recall. Right.

MR. WAGSTAFFE: Your Honor, I'm going play two sequences. I'll give you both, so I don't do what I did last time. 94 -- just as again for the May part, Your Honor, maybe what we've seen before, 94:7 to 9 and 95:18 to 96:3.

MR. POTTER: No objection, Your Honor.

THE COURT: Go ahead.

(Portions of video deposition played, not reported)

BY MR. WAGSTAFFE

Q And Mr. Wadler didn't do anything in the first week of June of 2013 that led to his termination, right?

A Correct.

Q April, May, June, he did nothing that you could recall at a deposition for which you prepared so assiduously, not one thing you can recall that he did wrong that contributed to his termination. Correct?

A Not that I recall.

Q Not one bizarre act that you can tell us about now that you didn't tell us about at deposition, right?

A Not that I can recall.

Q And in fact, you got no new information about Mr. Wadler between April 11th and June, that caused you have to terminate him. Right?

A No.

MR. WAGSTAFFE: If we could play 96:4 to 12, Your Honor.

THE WITNESS: Could you say that question again, in case I answered that incorrectly?

BY MR. WAGSTAFFE

Q Sure.

MR. WAGSTAFFE: Let me try it again before we play it, Your Honor.

BY MR. WAGSTAFFE

Q You didn't get any new information at all about Mr. Wadler between April 11th -- which I will represent to you is the board date -- and June that caused you to terminate him. Isn't that right?

A When in June?

Q Well, let's just say the date you terminated him, on June 7th.

A Okay. I did receive information.

Q Okay.

MR. WAGSTAFFE: Your Honor, now I'll play 96:4 to 12.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q At your deposition, for which you prepared, you couldn't think of one example to give us between the date of the board meeting and the date of termination that in any way contributed to the decision to fire Mr. Wadler. Isn't that right?

A Correct.

Q In fact, sir, you had decided in advance of April 11th, that you were going to terminate Mr. Wadler. And that decision was set in your mind. Isn't that right?

A No.

Q Nothing happened at all between April 11th and June 7th that you can recall that contributed to his firing. Right?

A That's not correct.

Q On June 4th, the Davis, Polk lawyers made their final presentation on the China investigation. Right?

A Yes.

Q By that point, you had already decided to fire Mr. Wadler, before you even received the report on the investigation, itself. Right?

A No.

Q The fact is, sir, that you wanted to keep Mr. Wadler there so it looked good until you had cover from the Davis, Polk lawyers on the FCPA. Isn't that right?

A No.

Q The fact of the matter, sir, is it not true, that you weren't waiting for the results, necessarily, were you? You had decided to fire Mr. Wadler in April.

A No.

Q You weren't waiting for the results of the investigation to see whether Mr. Wadler was right or wrong, were you?

A No.

Q Okay. You get the Davis, Polk report on June 4th, is that right? In a meeting?

A Yes.

Q And you don't fire Mr. Wadler until a couple of days later. Right?

A Correct.

Q You didn't even discuss with Mr. Wadler the very -- the very report. Right? From Davis, Polk. In those last few days. Right?

A Correct.

MR. WAGSTAFFE: Could we play 282:24 to 283:14.

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q You certainly already decided fire him, and that's why you didn't talk about it. Isn't that right?

A No.

Q He's four doors down. Did you go down and say: Hey, Davis, Polk came in, and all looks good? Did you say that to him?

A No.

Q That's because you were -- just a few days later, the day before you fired him, you signed an authorization to have him fired, didn't you, in the employment file?

A Probably.

Q Okay.

MR. WAGSTAFFE: Prior to firing Mr. Wadler, you did not keep any type of log in 2013 to keep track of what Mr. Wadler did, that you found inappropriate. Did you?

A No.

MR. WAGSTAFFE: Could we play 22:21-24?

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Okay, go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q And you didn't attempt to create any human resources record of any kind for Mr. Wadler's file that would document or list activities by him that you found inappropriate in 2013. Right?

A Correct.

MR. WAGSTAFFE: If we could play 22:25 to 23:4.

MR. POTTER: No objection, Your Honor.

THE COURT: Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q And the only performance review that was existing at that time was the one from December of 2012. Right?

A The -- the only -- yes.

Q And that certainly wasn't attempting to document any inappropriate activities, was it?

A No.

Q Isn't it true, sir, that you never told Mr. Wadler that you were even thinking about firing him until the day he walked into your office? Isn't that right?

A No.

Q That's not true?

A No.

Q You never expressly discussed firing him, did you?

A There was -- there are a couple of occasions where -- where I sat down with -- I remember one occasion where I sat down with him and Christine Tsingos, and I indicated that they both needed to improve their behavior or I would find other options.

Q So you are telling us that in so many words, that meeting was something where you thought you communicated that his job was in jeopardy? In so many words?

A Yes.

MR. WAGSTAFFE: Could we play 71:9 to 12?

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q Now, Mr. Wadler had a personnel file in HR, right?

A Yes.

Q I want to focus your attention to what's in that personnel file, as far as you know it. In the personnel file, HR file, from -- from starting on 12-20 and going all the way to time of his termination. Got it?

A Okay.

Q So, Exhibit 86 we have looked at, the actual personnel review from December. That was in the file, as far as you know, right?

A Yes.

Q Okay. And there was nothing else in that file of any kind, date-wise, until June 6th, in which you authorized, the day before, that he be terminated for unsatisfactory performance. Correct?

A That's probably correct.

Q And you thought he was acting unsatisfactorily in the way he was performing his job as general counsel. Right?

A Yes.

Q You thought he was acting unsatisfactorily by bringing that audit report to the Audit Committee. You thought that was unsatisfactory, didn't you?

A No.

Q You thought that was one of -- that was one of the reasons you fired him, wasn't it?

A No.

Q Not at all?

A No.

Q And there were certainly nothing in the file by way of an employment review as of June 7th of 2013. Right?

A Correct.

Q No warnings. Right? That were in the employment file, right?

MR. POTTER: Objection --

THE WITNESS: That were in the employment file, you are correct.

THE COURT: Overruled.

BY MR. WAGSTAFFE

Q And no PIP, right?

A No.

Q No notes of counseling, right?

A In the personnel file?

Q Personnel file.

A Right.

Q And then I want to draw your attention to June 7 of 2013.

Did you tell Mr. Wadler at any time before the meeting that day with him that he was going to be fired?

A No.

Q And that was the day you told him you were going to fire him?

A Yes.

Q And you have regular weekly meetings with him, don't you?

A Yes.

Q And that was a day scheduled for a regular weekly meeting, right?

A Yes.

Q And he came down to your office late in the afternoon on Friday -- it was a Friday, wasn't it?

A I believe so. That was our normal day.

Q And you welcomed him to the office, didn't you?

A Yes.

Q What -- you had some script notes ready to fire him?

A Yes.

Q And you had gone over the script notes with HR, right?

A Yes.

Q Wanted to make sure they were accurate?

A Yes.

Q Complete?

A Yes.

Q Didn't want to leave anything out, right?

A Right.

Q All right. And, as soon as he sat down, did you say: Let's get right to it, we've known each other for a quarter century?

Did you start right away and tell him?

A Yes.
Q Who was in the room with you?
A Colleen Corey.
Q Are you telling us that Ms. Corey was in the room the entire time?
A Yes.
Q Isn't it true that the meeting started, talking a little bit about things that were regular day events, and then Ms. Corey joined you?
A I think she was there right from the start. But -- but it's been three or four years ago.
Q This was a significant event, to fire the general counsel. Right?
A Yes.
Q Does it not stick in your memory?
A When she came in the room, no.
Q Doesn't -- this was not an everyday event to fire a general counsel, was it?
A No.
Q You left the door a little ajar, didn't you?
A I don't recall.
Q And you -- did you seem disinterested in the things that Mr. Wadler was saying initially?
A I don't recall.
Q And then Ms. Corey joined you, isn't that right?

A She joined us, yes.
Q And after she joined you, then you segued, may I say, to firing Mr. Wadler. Right?
A When she was present, yes. We discussed his termination.
Q Okay. And when you fired him, you had a script, right?
A Yes.
Q If you could turn to Exhibit 88, sir. Do you recognize Exhibit 88, sir?
A Yes.
Q And is it your testimony that those notes were before you on your desk when Mr. Wadler was in the room being fired?
A Yes.
Q Where were you guys sitting?
A Where were we sitting?
Q Sure.
A At my table.
Q Okay. And this is a script you prepared for yourself, correct?
A Yes.
Q And you start --
MR. WAGSTAFFE: Your Honor --
BY MR. WAGSTAFFE
Q Is it kept in the ordinary course of business, these notes?
A What's that?
Q These are notes that you had in your file, at the business?

A Yes.

MR. WAGSTAFFE: I would move these into evidence, Your Honor.

MR. POTTER: No objection, Your Honor.

THE COURT: They are admitted.

(Trial Exhibit 88 received in evidence.)

(Document displayed)

MR. WAGSTAFFE: Let's look at the first paragraph.

(Document displayed)

BY MR. WAGSTAFFE

Q It says (As read):

"Sandy, you have served the company well for many years as we have grown from 100 million to where we are today."

Did you say that to him?

A Yes.

Q Were you reading it when you said it?

A I followed the script pretty carefully.

Q And that was truthful, wasn't it? He had served the company very well for many years. Right?

A Yes.

Q And he was at the company as it grew from a $100 million company to a multi-billion-dollar company. Isn't that right?

A Yes.

Q The growth of the company you felt was -- he contributed well to that, didn't he?

A He contributed to that.

Q Okay. If you will go to the third bullet point.

(Document displayed)

Q You write -- did you say to him (As read):

"The board has been talking to me about the role of the general counsel and has unanimously determined that the company needs to make a change."

Do you see that?

A Yes.

Q Did you tell him the truth, that it was you who decided to do it, and that the board simply followed you?

A No.

Q Were you trying to give him the same impression that the board instructed you to do it, and you were just kind of, you know, the guy who was going along?

A This is not an untrue statement.

Q Let's turn to the fourth point.

(Document displayed)

Q The fourth point says:

"This has nothing to do with the recent Davis, Polk investigation."

Do you see that?

A Yes.

Q And that means you understood that what you were referring

to was the investigation that was started in part by Mr. Wadler's report to the Audit Committee. Right?
A Right.
Q And even though you say this has nothing to do with it, you were mentioning it because his termination was actually related to that report and investigation, wasn't it?
A In part.
Q You don't mention anything else that has nothing to do with why you're firing him. Right?
A Right.
Q Kind of -- didn't you think it was kind of odd to be giving him a negative reason for firing him? "I'm not firing you because of the Davis, Polk report." Didn't you think that was a little odd?
(Witness examines document)
A Do you want me to answer that?
Q Sure.
A Okay. No.
Q But that was the only thing in your entire script in which you were telling him the reasons it wasn't for. Right?
A Yes.
Q You said this, because you knew there was a direct connection between Mr. Wadler's report to the Audit Committee and his termination. Correct?
A No.

Q Mr. Wadler's report to the Audit Committee about the FCPA in China, the violations there, was the issue of the very moment when he was fired. That was going on, right?

MR. POTTER: Objection, vague.

THE COURT: Overruled.

THE WITNESS: So, could you ask that question again?

BY MR. WAGSTAFFE

Q Sure. Mr. Wadler's report to the Audit Committee about FCPA potential violations in China was the issue of the moment when he was fired, wasn't it?

A I don't understand what you mean by "issue of the moment."

Q All right, let's try it by deposition, then. 139:15 to 140:20.

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Overruled -- okay, play it.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q Mr. Schwartz, Mr. Wadler's termination, in fact, was somewhat related to his report to the Audit Committee, wasn't it?

A Somewhat.

Q Despite what you said to Mr. Wadler when you fired him, at deposition you told us that it was related to -- somewhat to the Audit Committee report. Right?

A Yes.

Q And to the Davis, Polk investigation. Right?

A To the Audit Committee report. Oh, I'm sorry, I'm sorry; maybe I misspoke.

Q Let me try it again.

A Yeah, please.

Q You told Mr. Wadler that it had nothing to do with the Davis, Polk investigation. Right?

A Right.

Q That was not truthful, was it? You lied to Mr. Wadler when you fired him.

A No.

MR. WAGSTAFFE: Could we play 141:22 to 25?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Portion of video deposition played, not reported)

BY MR. WAGSTAFFE

Q Mr. Schwartz, let's go back to Exhibit 88, your script for the firing.

A Okay.

MR. WAGSTAFFE: Can we put that up?

(Document displayed)

BY MR. WAGSTAFFE

Q You told Mr. Wadler that there was -- you decided to fire him certainly before June 7th, didn't you?

A We were moving down that path, yes.

Q You keep talking about moving down that path. I want to ask you, eventually you got there, to the end of the path, even in your testimony. Right, sir?

A Right.

Q And you certainly got to the end of that path -- you didn't get to it on June 7th, itself, did you?

A At the end of the day, yes.

Q So you didn't decide to fire Mr. Wadler until the end of the day. That just came to you that that was the time. Right?

A No.

Q You'd been planning it for months. Isn't that right?

A We had been moving down that path, yes.

Q And you had been planning it for months, without even sharing one iota of that plan for months with your general counsel of 25 years. Isn't that right?

A That's correct.

Q It was a secret plan to terminate him, wasn't it?

A Yes.

Q And you wanted to wait until Davis, Polk came back, because you wanted to be able to say to him, that is, Mr. Wadler: Oh, there's no problems. See that Audit Committee thing you did? That was a big mistake.

That's why you waited until the 7th, isn't it?

A We wanted to see what the result of that report was.

Q And you told Mr. Wadler in the firing meeting around the table in your office that, in fact, that report had come back, and there was no trouble in China. And he was wrong.

Isn't that what you told him? Or words to that effect?

A The words -- the words were what are here on the paper.

Q So, you're literally reading these words to him, and that's why you know it's word for word?

A Pretty literal.

Q All right. Because you were told: Have a script so we can keep track of it.

Is that sort of it?

A This was -- this was the way I did this.

Q Because you were afraid he might sue you. Right? That's why you kept a script for this meeting. Right?

A We scripted this -- um, it was a personnel issue, and wanted to make sure we captured the conversation correctly.

Q And you say "We." I don't want to know about your lawyers. I only want to know about who else. Who is the "We"? Who was in on this secret plan?

A So, me.

Q. You and, I take it, the HR director?

A. Yeah. I was the one who scripted this.

Q. And then you shared this script with the HR director before coming to the meeting, right?

A. Yes.

Q. Did you have any drafts of it?
A. I don't recall.
Q. Make any changes?
A. Probably.
Q. So you had a draft, but you threw the draft out, right? An important document you threw it out, right?
A. Yes.
Q. You knew you might get sued, but you threw out a draft, right? Right? Is that right?
A. I'm not sure I knew we would get sued.
Q. Okay. Let's go to the -- let's go to where it says "In fact."
MR. WAGSTAFFE: You had it. I'm sorry.
(Document enlarged.)
BY MR. WAGSTAFFE
Q. Your script says:
"In fact, they reported to the Audit Committee and the Board they found no evidence of corruption from their investigation and China visits."
Do you see that?
A. Yes.
Q. And you meant Davis Polk, right?
A. Yes.
Q. Is it your testimony here that Davis Polk said there were no ongoing red flags or need for an investigation?

A. Say that again.

Q. Is it your testimony here that Davis Polk reached the conclusion that there were no more red flags, nothing more to investigate?

A. I don't recall them using the word "red flags."

Q. Let's go to the next bullet point.

You told them that:

"Part of the problem the Board perceives is the continuing dysfunctional relationship between you, your peers, your department and others including the Board and Audit Committee."

Do you see that?

A. Yes.

Q. Well, first of all, I guess that was only part of the problem, right?

A. Yes.

Q. You didn't tell them about any of the other problems?

A. This is what we talked about.

Q. All right. And these are dysfunctional relationships that didn't make their way to the HR file?

A. Correct.

Q. All right. And you say:

"Dysfunctional relationship with the Audit Committee."

Do you see that?

A. Yes.
Q. That was because you thought the submission of the report to the Audit Committee was dysfunctional. You didn't want your general counsel whistleblowing, isn't that right?
A. No.
Q. You thought it was dysfunctional with the Audit Committee because Mr. Wadler had the audacity to present a report that said the company might have some financial exposure, right?
A. No.
Q. You told him it was going to be the last day with the company, right?
A. Yes.
Q. Okay. I'd like to have you just for a moment re-read your notes because I want to ask you a couple questions about what's not in there. I'll give you a chance to look at it.
(Witness complied.)
A. Okay.
Q. Okay. Not one word in there about FCPA or Mr. Wadler's issues on the FCPA, right?
A. Correct.
Q. Not one word in there about supposedly being late on the 10-K, right?
A. Correct.
Q. Neither of those were the reasons that he was fired, right?
A. That's not true.

Q. It told him why you were firing him. It didn't say a word about, oh, he's late on the 10-K. You didn't say a word about that, did you?
A. If you look at the paragraph that you have up, you can see all about this "dysfunctional relationship between you, your peers, your department and others."
Q. And you thought it was dysfunctional for him to raise concerns about the low reserve on the Life Tech audit. You thought that was dysfunctional, right?
A. No.
Q. You didn't want him to raise that low reserve because you were initially opposed to it, right?
A. That's not correct.
Q. In fact, you didn't -- you thought he was dysfunctional in raising that issue?
A. Yes.
Q. Okay. And he had raised it for months, hadn't he?
A. Not that I recall.
Q. How about the FCPA? You didn't fire him because of the FCPA, right?
A. Correct.
Q. There's not a word in here specifically about him missing meetings, is there?
A. No.
Q. You didn't tell him: Hey, you have been missing meetings,

did you?

A. No.

Q. You didn't say he had been unraveling in the last six months, did you?

A. No.

Q. You didn't tell him: My God, there was a threat assessment. You didn't say that here at all, did you?

A. No.

Q. You didn't tell him he was asleep at the switch in China, did you?

A. No.

Q. You didn't call him an FCPA slacker, did you?

A. No.

Q. You didn't say he was flawed to the core or words to that effect, did you?

A. No.

Q. So how long did the meeting last?

A. I'm sorry?

Q. How long did the meeting last?

A. Probably 10, 15 minutes would be my best guess.

Q. Did the head of HR say a word?

A. Not that I recall.

Q. Mr. Wadler did not raise his voice, did he?

A. No.

Q. Mr. Wadler didn't act bizarrely in this meeting, as far as

you could tell, right?
A. No.
Q. He was a pro, wasn't he? As you saw it, he was a pro. He handled this like the professional he was, right?
A. Yes.
Q. Okay. Been there over 25 years. I guess the decision had been made to walk him out of the building. That was made in advance, wasn't it?
A. Yes. It's our normal practice.
Q. It's the normal, practice, sir, to walk executives out of the building when they are terminated?
A. Yes.
Q. And you're telling us that that happened every time an executive was terminated in the last few years?
A. I can't tell you that.
Q. All right. And he was not allowed to gather his personal things, was he?
A. Correct.
Q. Couldn't get his Rolodex?
A. I don't know about Rolodex.
Q. You didn't know that he had three -- he had three Rolodexes on -- in his office?
A. I recall he had some -- something sitting there on his desk, but...
Q. Told he had to be walked out of the building with someone in

the building, right?
A. Yes.
Q. You weren't afraid he was going to do anything violent, were you?
A. No.
Q. Really, no.
And did you let him go say goodbye to his personal assistant of 15 years?
A. No.
Q. Did you hear her crying when you got out of the office? Did you hear her crying?
A. No.
Q. Okay. Had you told anybody else in the office area that you were going to fire Sandy?
A. No.
Q. So nobody, as far as you knew, would have had any reason to believe that anything was going on that day with respect to Sandy Wadler, correct?
A. Correct, other than calling Corey.
Q. Except when he got walked out of the building, it wasn't through a back door. It was right in areas where people could see him, right?
A. Out the back door, yes.
Q. Well, people could see him on the way out, right?
A. There aren't windows in that hallway, no.

Q. There were people who worked there, right?
A. Yes.
Q. They could see him being perp walked right out of the building, right?
MR. POTTER: Objection, your Honor.
THE COURT: Sustained.
BY MR. WAGSTAFFE
Q. They could see him being walked out of the building as if he had committed a crime, isn't that right?
MR. POTTER: Same objection.
THE COURT: Sustained.
BY MR. WAGSTAFFE
Q. Could they see him being walked out of the building, escorted, by the head of HR?
MR. POTTER: Objection. Foundation.
THE COURT: Overruled.
A. If they happened to be in the exit hallway, yes.
BY MR. WAGSTAFFE
Q. By the way, when he -- when he left, did you walk him out yourself?
A. No.
Q. Did you hug him goodbye?
A. No.
Q. Did you -- did anything else happen in that meeting we haven't talked about?

A. Not that I recall.
Q. Well, by the way, at that very moment in time there was no employee review of Mr. Wadler's conduct for anything happening in 2013, right?
A. Correct.
Q. At that moment in time --
A. In his files, yes.
Q. At that moment in time you had not written any draft, any draft of an employee review, isn't that right?
A. No.
Q. That's not right?
A. That's not right.
Q. You had a draft of an employee review?
A. Yes.
Q. All right. And that draft was in your file?
A. It was somewhere on my desk.
Q. And it's still there?
A. Don't know where it is. I can't tell you right now where it is.
Q. The notes that you supposedly wrote that became a document we'll look at in a moment, you know, months later, you don't have those notes any more?
A. No. Those notes were discarded.
Q. All right. We'll come to that. Something else did happen in the meeting, though, did it not, sir?

A. Maybe you can remind me.
Q. Okay. Well, you made a -- you handed him a settlement agreement and a general release --
A. Oh, yes. That's right.
Q. -- and a consulting agreement he had never seen before, right?
A. Yes. That's correct.
Q. How long had that document been a draft?
A. Probably for a month or so.
Q. I guess you had clearly decided at least -- you'll tell us you decided to fire him when you drafted a settlement agreement and a release, correct?
A. We had prepared those.
Q. Okay.
MR. WAGSTAFFE: And if we can put 787 up?
(Document displayed.)
BY MR. WAGSTAFFE
Q. You -- this is -- you can turn to 787 if you could, sir, in your binder?
A. 77?
Q. 787.
A. 787. I don't have a 787.
Q. It's in evidence, so perhaps --
A. This only goes up to 353 -- 357.
THE COURT: I don't have it either.

MR. WAGSTAFFE: I can do it on the screen or I can get the other binder, whatever you'd like, your Honor.

THE COURT: Get the other binder so the witness can have the whole document.

MR. WAGSTAFFE: Okay. Thank you, your Honor.

(Brief pause.)

MR. WAGSTAFFE: Your Honor, may I approach?

THE COURT: Sure, go ahead.

(Whereupon document was tendered to the witness.)

THE WITNESS: Okay. Thanks.

BY MR. WAGSTAFFE

Q. You've seen these two documents before, the settlement agreement, general release and a consulting agreement?

A. Yes, yes.

Q. And you understood that was going to be between the company and Mr. Wadler, right?

A. Yes.

Q. And it was to reflect his separation, correct?

A. Yes.

Q. All right. And that there were going -- you offered him a cash payment, right?

A. Yes.

Q. Of about $407,000?

A. Correct.

Q. But the separation date, he'd have to cancel all his outstanding equity grants, right?

MR. WAGSTAFFE: If we can go right below it, it will help perhaps. Subdivision D at the very bottom.

(Document enlarged.)

A. Well, the complete statement is to the extent not vested.

BY MR. WAGSTAFFE

Q. All right. I understand. Well, you knew he was in the constant process of vesting stock, didn't you?

A. He was -- yes. There was shares he constantly vested.

Q. You were asking that for him to get any money at all he had to agree to give up what that was, right?

A. The unvested amounts, yes.

Q. And did you calculate how much money that he would be giving up if he had been able to stay there for just, you know, a handful more months to let them vest? Did you calculate that?

A. No.

Q. Did it matter to you, how much he was -- the company was going to be able to keep that stock and he wouldn't get it? Did that matter to you?

A. It wasn't a consideration.

Q. Did you assess what the real price of this deal was, 400,000 less how much the company would save by not having that stock vest?

A. No.

Q. Was it over $200,000 worth of possible vesting?

A. I have -- I have no idea.
Q. You knew Mr. Wadler made about $400,000 a year in base salary, right?
A. Yes.
Q. And you knew that he had -- that he got a bonus virtually every year. I just want to just look at 2012, but he got a bonus, yes?
A. Yes, I believe so.
Q. And that was a bonus based on the company's performance, not on his personal performance, right?
A. Yes.
Q. Company has been doing pretty well since he left and was fired in 2013, right?
A. We've done okay.
Q. Stock vesting done pretty well, right?
A. It's done okay.
Q. Okay. Certainly hasn't gone down, right?
A. Correct.
Q. Okay. Then if you'll turn to the next page, which is Paragraph 3, this wasn't just to give him severance. You wanted a release of liability, right?
A. Yes.
Q. That's because you thought the company might face some liability, right?
A. This is fairly standard in these release agreements.

Q. Fairly standard, all right. Well, basically, in layman's terms, Sandy couldn't sue you for anything, right?

A. I'm not an attorney, but I think that's probably a fair assumption.

Q. You're the one who presented him the document, right?

A. Yes.

Q. All right. You handed it to him for the first time, with no opportunity to read it, in the meeting?

A. Correct.

Q. In the meeting, okay.

And if you go to the top of Page 3, the next -- still part of the release. You were asking him to release, among other things, *Sarbanes-Oxley*. Do you see that? The very top, third line of Page 3. Do you see that?

A. Yes.

Q. You understood that was the very whistleblower statute we're here in this court on, right?

A. Okay.

Q. Is that right?

A. Yes.

Q. And, I mean, *Sarbanes-Oxley* is nothing new to you, is it, sir, as the CEO of a billion dollar company?

A. No.

Q. *Dodd-Frank*, the federal statute, is nothing new to you, is it?

A. No.
Q. Those are federal regulations that you live with, right?
A. Yes.
Q. Abide by, right?
A. Yes.
Q. All right. And you wanted to make sure that for getting this money he gave up his rights to recover any lost income, other than what you were offering him, for the rest of his life, right?
A. Yes.
Q. Okay. And if you go to the top of Page 4? All right. One of the terms, it calls it "Additional Covenant," is something called "non-disparagement." What did that mean?
A. It means basically that -- that the individual will not disparage the company.
Q. Have you ever heard this phrase called a "buyer silence" phrase?
A. No.
Q. Basically if he took this deal and took the 400,000 less the stock, that part of the deal, he's got to be quiet, right, about this company? Right?
A. Yes.
Q. Keep going. There is another document called a Consulting Service Agreement.
A. Yes.

Q. And that was also presented to him, right?

A. Yes.

Q. Okay. And in that agreement you were willing -- this was a person you thought was dysfunctional, isn't that right? That's why you fired him. He was dysfunctional, right?

A. Yes.

Q. He was somebody, you're telling us, you thought could not be trusted to do company activity in any way. Isn't that why you fired him?

A. Yes.

Q. And this was somebody who you thought actually lacked ethics because of what he did in this case, didn't you?

A. No?

Q. This was somebody that you thought there were multiple reasons with respect to functionality as a human being, not just a general counsel. You thought it was a personality defect, didn't you?

A. That's -- that's what it seemed to come to.

Q. All right. Let's look and test that. Let's go to 7.1 on Page 4 of that agreement, sir.

(Document displayed.)

A. Okay.

Q. You were willing to pay him $10,000 a month to be -- up to three -- up to two years to be a -- to be a consultant, you know, a consultant to the company, right?

A. Yes.

Q. Okay. And, now, this one was not really $240,000, was it? Look at 7.2.

A. Okay.

Q. Although you were offering him $10,000 a month for two years, the company, without any reason whatsoever, could end this agreement -- for any reason, could end this agreement with three months' notice, correct?

A. Yes.

Q. He signs it, and you could cancel it 24 hours later, and he gets 10,000 for three months. That's all he gets, right?

A. Yes.

Q. Let's go to the -- to the last exhibit to this very agreement describing his services.

This describes, does it not, sir, the services you wanted to hire him for, right?

A. Yes.

Q. This dysfunctional person, you wanted to be helping the company on FCPA, is that right? Subparagraph B?

A. You say B?

Q. Look at B.

A. Yes, I see it there.

Q. This dysfunctional person, you wanted to pay $10,000 a month so he could help the company on FCPA, is that right?

A. Yes.

Q. Look at C. This dysfunctional person, you tell us you wanted to assist the company in its implementation of its compliance and ethics procedures. Do you see that?

A. Yes.

Q. You didn't really think he was dysfunctional. You just didn't want him to stay at the company because he had brought a complaint to the Audit Committee, isn't that right?

A. No.

MR. WAGSTAFFE: Your Honor, this would be for me an appropriate time to take a break.

THE COURT: All right. Let's take our afternoon break. Let's take -- let's make it a short break, ten minutes, and then we'll come back. Thank you very much.

(Jury exits the courtroom at 2:36 p.m.)

THE COURT: So how much more do you have?

MR. WAGSTAFFE: It will take me through the day for sure. I mean, I know I'll be into Monday morning.

THE COURT: All right. Thank you.

(Whereupon there was a recess in the proceedings from 2:37 p.m. until 2:49 p.m.)

THE COURT: All right. Welcome back. Please proceed.

MR. WAGSTAFFE: Thank you, your Honor.

BY MR. WAGSTAFFE

Q. Mr. Schwartz, could you turn to Exhibit 87?

(Witness complied.).

Q. And I want to focus your attention on the second and third page of that exhibit.
A. Yes.
Q. Do you recognize that?
A. Yes.
Q. Is that a copy of a Performance Review that you prepared?
A. Yes.
Q. And although it's dated April 15, 2013, you didn't prepare it that day, did you? Just that document.
A. This document?
Q. Was not prepared on April 15th, 2013, correct?
A. It --
Q. It's a "yes" or "no."
A. Completed.
Q. It's not my question. Was the document right there prepared and typed on April 15th of 2013?
A. No.
Q. Now, more than a month after you fired Mr. Wadler, you created a performance review for him that you backdated to April, didn't you?
A. It --
Q. It's a "yes" or "no."
A. Yes.
Q. Do you remember at your deposition that you prepared for that we asked you about the process you went into for creating

Performance Reviews?

A. Yes.

MR. WAGSTAFFE: Your Honor, we will be playing a fair amount of video now. I will do my best as we go with my colleagues to give the citations.

THE COURT: Well, I will hold you to that.

MR. WAGSTAFFE: Please. I hope I do it.

Let's go with -- and if I, Ms. Guzman -- can I just say it?

THE COURT: Sure.

MR. WAGSTAFFE: If I give a number, just play the number. I'll try each time to do it.

I would like you to play 65/11 to 66/3 and 67/16 to 19.

THE COURT: Any objection?

MR. POTTER: No, your Honor.

THE COURT: Proceed.

MR. WAGSTAFFE: Thank you, your Honor.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. So, Mr. Schwartz, you have an empty template review form that's on your computer, is that right?

A. Yes.

Q. And you open it up and you fill it out and you save it as a new document?

A. Yes.

Q. And there is a spot on the form for the date, right?

A. Yes.
Q. And you write that in when you're done with the form, right?
A. Yes.
Q. You write the date in when you're done with the form, right?
A. Yes.
MR. WAGSTAFFE: If we could have 69/9 to 24 and, is it, 122/13 to 25.
THE COURT: Any objection?
MR. POTTER: No objection.
THE COURT: Go ahead.
(Videotape played in open court, not reported.)
BY MR. WAGSTAFFE
Q. So in that second excerpt, Mr. Schwartz, you were talking about the 2012, December 2012 form?
A. Which is the 2011 review.
Q. Okay. But you were telling us, were you not, under oath, that the date you put on it in that second box from the top right, that's the date that you actually prepared it; isn't that right?
A. Typically, yes.
Q. That's your practice. If you put a date in that form, in that second box from the top right, that's the date you prepared it, correct?
A. Yes.
Q. And on that last review, which was in the -- in the

employment file, that one you told us was prepared on the date in that second box from the top right, correct?

A. I believe so.

MR. WAGSTAFFE: If we could put Exhibit 87 on the screen? I'm sorry, your Honor. I move to admit Exhibit 87.

MR. POTTER: No objection, your Honor.

THE COURT: It's admitted.

(Trial Exhibit 87 received in evidence)

(Document displayed.)

BY MR. WAGSTAFFE

Q. Let's look first at the cover email on this particular copy of it.

As we do that, I want to ask you a question. This particular document we're going to look at in a second actually found its way into Mr. Wadler's personnel file, didn't it?

A. No.

Q. Is it your testimony that this document never found its way into the personnel file? Is that your testimony?

A. Yes.

Q. Okay. All right. Because, in fact, the personnel file, other than termination documents, had the December 2012 review and it had -- that is the personnel file maintained by HR, and it had essentially nothing else, and then this finds its way into the file thereafter, doesn't it?

A. Into the HR's personnel file?

Q. Sure.

A. No.

Q. Do you have any reason to know why it might have gotten there?

A. No.

Q. All right. So you send a copy of this document to Lou Drapeau, right?

A. Correct.

Q. You say nowhere in this email that it was backdated, do you?

A. No.

Q. You say nowhere in this email that it wasn't finally typed or prepared until after Mr. Wadler left. You don't tell Mr. Drapeau that, do you?

A. No.

Q. You lead him to believe, your own -- your own person in the company, you lead him to believe that this was a contemporaneous employee review, don't you?

A. Yes.

Q. And the only reason -- you had it prepared before Mr. Wadler left, but you didn't give it to him because he's no longer there. That's what you were telling me, weren't you?

A. Yes.

Q. And it attaches a document that appears to be a review for 2012, right?

A. Well, let me back up a second. I didn't -- you know, I didn't really -- I didn't tell him anything. I -- you know, you can see what -- I sent him the review.

Q. You did tell him something in your cover email. You said it was his 2012 review, right?

A. Right.

Q. You withheld facts from your -- from your own Board member, which was that it was a backdated review?

A. No.

Q. All right. Let's go to the next document, which is the review itself.

MR. WAGSTAFFE: Thank you, Ms. Guzman.

It's attached to it. If you go to the top, box in the top right. Thank you.

(Document displayed.)

BY MR. WAGSTAFFE

Q. This was a review, was it not, sir, that was for Sandy Wadler, right?

A. Yes.

Q. He was in the Group Division - Corporate. He was Legal, right?

A. Yes.

Q. His Position/Title is General Counsel, right?

A. Yes.

Q. No need to prepare an employee review after somebody leaves, is there? It's kind of weird, isn't it?

A. It depends.

Q. Depends. To prepare an employee review that you would normally give to an employee and prepare it after he leaves?

A. To document the files.

Q. Or to make it look like he had one in live time, is that it?

A. I don't understand what you mean.

Q. You don't know what my question was when I said: Wasn't the purpose of this to make it look like you had a document in the company's files that was live time; meaning, it was actually prepared in April before he left. Near or about the time you say the Board decided and instructed you to terminate him, right?

A. So can you give me that question once again?

Q. Sure. Wasn't the real purpose of this document to make it look like you had prepared it in April, in live time -- meaning he was still an employee -- so it looked like an actual employee review; isn't that right?

A. No.

Q. It has a date of April 15th of 2013. Do you see that?

A. Yes.

Q. And as you just told us, it was your practice that that was the date you would type in when you finally prepared it, right?

A. Typically.

Q. You'll certain agree with me that this one was not finally prepared on April 15th, right?

A. Correct.
Q. And at your deposition -- well, let's just play it.
MR. WAGSTAFFE: 127/15 to 19.
THE COURT: Any objection?
MR. POTTER: No objection.
THE COURT: Proceed.
(Videotape played in open court, not reported.)
BY MR. WAGSTAFFE
Q. When you gave your deposition, sir, at the beginning of the deposition, you didn't know there was metadata that disclosed when this document was prepared. You didn't know that, did you?
A. I'm not very familiar with metadata.
Q. All right. You didn't know there was any evidence that would show when it was actually prepared, did you?
A. No.
Q. And when we asked you at your deposition about when you prepared this review, you gave us an answer, didn't you?
A. Yes.
MR. WAGSTAFFE: Let's go to 123/17 to 124/1.
THE COURT: Any objection?
MR. POTTER: No objection.
THE COURT: Proceed.
(Videotape played in open court, not reported.)
MR. WAGSTAFFE: Let's play 124/15 to 125/4.
THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Proceed.

(Videotape played in open court, not reported.)

MR. WAGSTAFFE: Your Honor, I'd play 127/4 to 12.

THE COURT: Any objection?

MR. POTTER: No objection, your Honor.

THE COURT: Go ahead.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. Did you actually open up the template, sir, on this document before he was terminated?

A. Did I open up the template?

Q. Yeah. June 7, 2013. Are you telling us that you actually opened up the template before he was terminated? Is that your testimony?

A. I don't know.

MR. WAGSTAFFE: Let's play 128/5 to 7.

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. Mr. Schwartz, was that truthful testimony?

A. I believe so.

Q. You didn't touch this document after June 7th, is that what you're telling us?

A. I don't believe so.

Q. This document was created, was it not, sir, as a Microsoft Word document, correct?

A. The document was created as a Microsoft Word document.

Q. Is that right?

A. This was a form to be filled in.

MR. WAGSTAFFE: 123, Lines 1 to 4, please.

THE COURT: Any objection?

MR. POTTER: No.

THE COURT: Proceed.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. You do know, sir, do you not, that there are programs that keep track of when a file is created with something that's called metadata? You know that, don't you?

A. I'm not very familiar with metadata.

Q. Well, you recall responding to Requests for Admissions in this case, don't you, where we asked you to admit certain facts?

A. Yes.

Q. And you recall that we asked you a question that said:

"Admit you created plaintiff's written focal performance review for 2012, attached hereto as Exhibit A, on July 9th, 2013."

Do you see that? You knew you were asked that question, right?

A. Yes.

Q. And you responded to that under penalty of perjury, did you not, in writing, correct?

A. Yes.

Q. And you responded and admitted that the metadata indicates that Exhibit A, this document, was created on July 9, 2013. However, you believed that you started the review in handwritten format before the termination, is that right?

A. Yes.

Q. So you are admitting that the document we're seeing here was not created until July 9th of 2013, the actual review, correct?

MR. POTTER: Objection. Mischaracterizes the admission.

THE COURT: Overruled.

A. So can you ask the question again?

BY MR. WAGSTAFFE

Q. Sure. You're admitting, are you not, now in this courtroom, under oath, that the metadata for this document shows it was not created until July 9th of 2013, more than a month after Mr. Wadler was already terminated? You know that, don't you?

A. Yes.

Q. Now, you don't have an actual memory of starting to draft the review before the termination, do you?

A. No.

Q. Therefore, you cannot testify here under oath that you did, in fact, start the review in any way before termination, right?

A. Correct.

Q. Now, you did not say a word in your deposition about using handwritten notes to draft reviews when asked what your practice was at your first deposition, did you?

A. That's not correct.

MR. WAGSTAFFE: Let's play 65/11 to 66/3.

THE COURT: Any objection?

MR. POTTER: No objection your Honor.

THE COURT: Proceed.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. Now, when we then pointed out to you in the deposition that the metadata said that your first explanation -- your first explanation, when we pointed it out to you, was that maybe you opened the file after the termination, but you didn't edit it. Do you recall that was your first explanation?

A. I don't recall specifically.

MR. WAGSTAFFE: 127/24 to 128/7.

THE COURT: Any objection?

MR. POTTER: No objection, your Honor.

THE COURT: Proceed.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. Sir, the metadata proves it was created in July of 2013.

You know that now, don't you?

A. I am not that familiar with metadata and how it works.

Q. But you at least admitted under oath in writing that you now know that, don't you? That was the Request for Admission that we just looked at, wasn't it? That's right?

A. Yes.

Q. Now, you are telling us that you may have had notes, but you don't actually remember using notes to write this; isn't that true?

A. Yes.

MR. WAGSTAFFE: Can we have 225/15 to 18?

THE COURT: Any objection?

MR. POTTER: No objection, your Honor.

THE COURT: Go ahead.

MS. GUZMAN: It's 228.

MR. WAGSTAFFE: 228? I'm sorry. Thank you. That's my bad. 228, Ms. Guzman, to?

MS. GUZMAN: 228/15 to 18.

MR. WAGSTAFFE: 228/15 to 18.

THE COURT: Any objection?

MR. POTTER: No objection, your Honor.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. And you can't testify today whether you had any notes, can you, sir?

A. No.

Q. You told us earlier today you had notes. Now you didn't have notes?

A. That's my normal process.

Q. That's your normal process. I'm asking you, as you sit here today, can you look the jury in the eye and tell them whether you had notes or not?

A. I -- I don't know whether I had notes or not. It was my typical practice to make notes because I was traveling a lot, and then I would -- I would document those in the form.

Q. But that's when you're having an actual employee review, right? If you did take notes, right? And then you would put it an employee performance form.

By the way, any notes of the 2012 one? Ever find those?

A. No. I mean, typically I discard the notes. You know, once you complete the form, you discard the notes.

Q. But you don't discard them when there is potential litigation out there, do you, sir? It's important.

A. In this period of time, you know, in early '13, you know, there was no -- you know, we didn't know there would be litigation.

Q. You're telling us that when you handed someone -- in July of 2013 you didn't know there was going to be litigation?

A. In July of 2013 there was that possibility, yes.

Q. You don't have any -- you just told us you have no recollection of making notes, right?

A. Yes.

Q. You have no recollection of throwing them away, right?

A. Right.

Q. So you don't know when you throw them away if you ever had them, right?

A. Right.

Q. You certainly -- when the report was made and you were thinking about whistleblower, you're telling us you didn't think there was a possible lawsuit?

A. When the report was made?

Q. When you were writing notes about whistleblower and loose cannons, you thought there was a possibility of litigation, didn't you?

A. There is always a possibility of litigation in a company, that's right.

Q. Okay. And you know as the CEO of a Fortune 1,000 company, there was an obligation to retain all documents -- notes, emails, sheets, documents -- the moment there is the possibility of litigation. You know that's the law, don't you?

MR. POTTER: Objection, your Honor.

THE COURT: Overruled.

A. No.

BY MR. WAGSTAFFE

Q. You've never had a document retention program you've ever been to in all the years you have been at Bio-Rad, that that's the basic rule?

A. Yes, we have had document retention programs.

Q. And you know the rule is, as training -- to your own employees' training is if there is a reasonable possibility of litigation, you must preserve all documents that have any possible relevance, whether a draft or not. You know that, don't you?

A. When we have litigation holds that are instituted, yes.

Q. Well --

A. But there was no -- there was note litigation hold that had been instituted.

Q. You understand your obligation to retain important documents doesn't require that you wait for a litigation hold. You just have to do it. That's the law, isn't it, as you understand it?

MR. POTTER: Objection, your Honor --

A. No, I don't understand that --

THE COURT: Just so -- when there is an objection, you have to wait.

THE WITNESS: Sorry.

THE COURT: Because I can't hear the objection when you're both talking at the same time.

MR. WAGSTAFFE: Your Honor, I will withdraw the question.

THE COURT: Okay.

MR. WAGSTAFFE: I'll make it easy.

BY MR. WAGSTAFFE

Q. Forget the law. You understand as a matter of corporate practice, whether you get a litigation hold or not, when someone has a reasonable basis for believing there might be litigation -- not filed yet, might be -- you have an obligation not to destroy potentially relevant documents, correct?

A. Okay.

Q. Was that -- that's true, isn't it?

A. You've so stated.

Q. No. You're the head of a Fortune 1,000, CEO of a company that does $2 billion a year. Are you telling us you don't know that rule?

A. I am not a lawyer.

Q. All right. But you don't actually remember typing this from handwritten notes in July, do you?

A. No.

MR. WAGSTAFFE: 2/30 to 3/7. Thank you, Sarah.

I think we're allowed to do it. You normally ask if it's okay.

MR. POTTER: No objection.

THE COURT: Go ahead.

MR. WAGSTAFFE: Thank you.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. You certainly don't have those notes now, do you, sir?

A. No. I wish I did.
Q. You don't have handwritten notes about anybody else's reviews from that year either, do you?
A. No.
Q. And why is it that you did not say one word about your so-called standard of practice of working from handwritten notes when you were asked under oath to explain how you created reviews before you realized the metadata proved it was written in July?
A. So seeing this testimony, I can understand where there's a misconception here.
You know, my answer was paper and -- I don't know what it was, paper and computer. And then I went on to explain how the -- how the document gets -- gets finally created. It looks like I inadvertently skipped over that first step.
Q. Was there any reason, sir, to create an employee -- to actually get on the typewriter -- the computer and type in an employee review that supposedly was from notes when the employee is no longer there and you're never going to give the review? There was no reason to do that, was there?
A. Well, in this case I think, you know, just kind of memorializing the understanding and where I was was important.
Q. You're telling us you had notes. Didn't that memorialize it?
A. I thought it would be useful to have them in a legible form.

Q. So your notes really are just a first draft of things. They don't mean that much, is that right?

A. I wouldn't -- I wouldn't characterize them that way.

Q. Are you telling this jury that these notes you can't remember were verbatim from what we may look at at the beginning of next week in this form?

A. No.

Q. You changed things as you sat down and typed it, right?

A. Yes.

Q. You weren't Bartleby the scrivener and just typed out your notes and put it in the form, did you?

A. No.

Q. So when you sat down in July, a month after Mr. Wadler left, you added some new stuff, right?

A. I -- I don't know.

MR. WAGSTAFFE: 228/1 to 10. Thank you.

THE COURT: Any objection?

MR. POTTER: No objection, your Honor.

THE COURT: Proceed.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. Isn't it true, sir, that you manufactured this review after firing Mr. Wadler?

A. No.

Q. And you did that because you think you needed something to make it look like you had a justification for firing him, isn't that right?

A. No.

Q. You backdated the document to make it look like it was written months before the termination, right?

A. No.

Q. Well, you did submit a declaration under penalty of perjury to the Department of Labor, right? You recall that, don't you?

A. Yes.

Q. And the Department of Labor, you attached this very document that was post dated, right?

A. Yes.

Q. You didn't tell them that it was post dated, did you?

A. No.

Q. I'm going to read you something. I'll make sure I've got it right.

You signed a declaration under penalty of perjury on January 27th of 2014. Does that sound right?

A. Yes.

Q. It was an important document to get right, right? Because it was going to the Department of Labor, right? Right?

A. Yes.

Q. And what does SOX mean?

A. It's *Sarbanes-Oxley*.

Q. All right.

"Mr. Wadler additionally alleges in his SOX complaint that I wrote a positive Performance Review for him in connection with the alleged promotion and increase in pay. In fact, I wrote a review that was largely critical of Mr. Wadler's performance and behavior in 2012 for the reasons described above and others. However, given the timing of this review relative to Mr. Wadler's termination, it was not given to Mr. Wadler. Attached hereto as Exhibit B is a true and correct copy of the Performance Review that I wrote for Mr. Wadler's 2012 performance."

You recall signing that under penalty of perjury, don't you?

A. Yes.

Q. And, in fact, it was not a true and correct copy of his employment review because it was created after the fact, right?

A. That's an interesting point. It was finalized after the fact.

Q. It was not a true and correct copy of an employee review as you told the Department of Labor under oath, was it?

A. I believe it was.

Q. You were trying to lead the Department of Labor to believe that although Mr. Wadler had put before them his very favorable review, you wanted them to believe that he had another more recent unfavorable review; isn't that right?

A. No.

Q. You were trying -- did you say anything to the Department of Labor about this being a backdated document?

A. No.

Q. And when you typed it up, you typed in April of 2013 to lead the reader to believe you had prepared it that day, isn't that right?

A. That's the date that's on the document, yes.

Q. And you did that because you wanted anybody who saw this document to think it was, as was your practice, to have it be created before he left, right?

A. No.

MR. WAGSTAFFE: Can we look at that exhibit?

Just a few minutes more, your Honor, for this topic.

THE COURT: Okay.

MR. WAGSTAFFE: Go to the top right again? Thank you, Sarah.

(Document displayed.)

BY MR. WAGSTAFFE

Q. Why didn't you type in the day that you -- why didn't you just type in the day you typed it? It was your practice. You typed it in July. Just be honest and say that. Why didn't you do that?

A. Because I believe I prepared this in April.

Q. But you just told us that there were many things in this thing that weren't in your April notes, right?

MR. POTTER: Objection. Misstates the testimony, your Honor.

THE COURT: Overruled. You can answer that question.

A. Can you restate the question?

BY MR. WAGSTAFFE

Q. Sure. You -- you just told us that you made changes when you sat down and did the typing in July that weren't in your notes; isn't that right?

A. It's possible, yes.

Q. So that isn't what you prepared on April 15th, even if you had notes, right?

A. It should be substantially the same.

Q. It is your practice, sir, as you told us earlier, that if notes are important in regards to litigation, you put them in the person's file, correct?

A. Yes.

Q. Those notes -- there were no notes in your Wadler file in your office, were there, at any time on this particular review, correct?

A. At any time?

Q. You didn't have notes ever in your file, did you?

A. I probably did have notes in my file, but I can't recall when they were in the file and when they weren't.

Q. I'm talking about this review. You said you had draft notes.

It was your practice to save -- put any notes that were important with respect to an individual, like, maybe their last review, and put it into the file that you kept in your own office. Forget Personnel. Your own office.

A. Right.

Q. You didn't do that, did you?

A. When this was created, then I would have discarded those notes when I put it in the electronic form.

Q. We'll never know whether such notes existed or not because you threw them away, right?

A. Correct.

MR. WAGSTAFFE: This is just for today, your Honor. I have more next week.

BY MR. WAGSTAFFE

Q. When you created this review, you wrote down a lot of really negative things about Sandy Wadler, didn't you?

A. Yes.

Q. You didn't sign it and date it like you normally do, did you?

A. No. Because it was not completed.

Q. And if we go to the bottom of the second page --

(Document displayed)

MR. WAGSTAFFE: Thank you, Sarah.

BY MR. WAGSTAFFE

Q. There at the bottom, no signature, no date, not an employee review, right?

A. Correct.

Q. If you go right above it, that box above it.

When you typed this document, sir, that you say you had notes for, you typed it after he was already fired, right? July. We know the metadata, right?

A. That's what the metadata says.

Q. For the love of God, tell us why you have objectives for the next review period when he was already gone?

A. Because these would have documented my -- my notes from earlier.

Q. Why would you type it? If they are just to memorialize your reasons, why type in objectives for the future?

A. All I can think of is that -- that I had started this review early and -- and went back and accessed it later. I -- I just don't know.

Q. But by April 15th you had already decided to fire him. Why have objectives for review for a person you've already decided to fire?

A. Because these were probably in the form earlier.

Q. When you were creating these reasons why you fired him, they were quite a bit different than what you had written in his review a few months earlier, in December, right?

MR. POTTER: Objection, your Honor. Asked and answered.

THE COURT: Objection is overruled.

A. Yes.

BY MR. WAGSTAFFE

Q. It was a complete 180 from great review to terrible review that you typed in July of 2013, right?

A. Yes.

Q. But even when you created these reasons, not a word about the 10-K, right?

A. Correct.

Q. Even when you created these reasons, not a word about the FCPA, right?

A. Correct.

MR. WAGSTAFFE: Your Honor, this is probably a good time to break.

THE COURT: Okay. Ladies and gentlemen, thank you for your patience and your attention all week.

We now have three days before you have to be here bright and early Monday morning. So it is particularly a good time to emphasize your obligations to the parties and to yourselves and to the Court.

It is critical that you not do anything about this case outside this courtroom. Don't read anything about it. Don't talk or investigate anything about it. Don't tell anyone about it. Don't email. Don't Twitter. Don't communicate in any fashion about the case. Don't let anybody communicate with you about the case. If any of that happens, I need to know about it. You tell Karen. But I don't expect any of you to be doing it and I expect you to make sure that others don't do it with you.

But thank you for your attention. You have been great this week and I'll see you Monday morning. We'll start bright and early at 8:30 with the testimony. Thank you.

(Jury exits the courtroom at 3:25 p.m.)

THE COURT: All right. The jury is absent. Let's do a little planning. So what's going to happen Monday?

MR. WAGSTAFFE: I will complete the cross examination, your Honor.

THE COURT: How long do you think you've got?

MR. WAGSTAFFE: An hour. But I -- you know how lawyers are, but that's what I expect.

MR. POTTER: I'm sorry. I missed that.

MR. WAGSTAFFE: One hour.

THE COURT: About an hour.

How much on your redirect do you think?

MR. POTTER: Probably about two to two-and-a-half hours I would estimate, your Honor.

THE COURT: Okay. So we may get to another witness on Monday.

MR. WAGSTAFFE: We can work with the other side on this, your Honor, as to witnesses.

THE COURT: Okay.

MR. WAGSTAFFE: We have got some people who are flying in and this kind of stuff. One witness we're accommodating.

THE COURT: Make sure they know who is coming.

MR. WAGSTAFFE: They are the ones that requested it.

MR. POTTER: We will, your Honor.

THE COURT: That's number one.

Number two is any -- at some point I will review the deposition excerpts that you might read in or play in lieu of live testimony. Any of that coming up so that I should spend this lovely weekend reviewing it?

MR. WAGSTAFFE: Next week. We will be playing it next week.

THE COURT: Who?

MR. LABAR: Lou Drapeau, your Honor. We'll be reading in Hillman. We will be reading Al Schwartz. We will be reading Martine Baemon, and we'll be reading Patrick Norton.

THE COURT: All right. I will do those this weekend.

Okay. Anything else we should discuss?

MR. WAGSTAFFE: Your Honor, the exhibits that they are going to use on direct, we can take up on Monday morning. You want to make sure we do it in advance?

THE COURT: Yes, yes.

MR. WAGSTAFFE: We will do that. Monday we will be ready to talk about our objections to theirs.

THE COURT: 8:00 o'clock.

MR. WAGSTAFFE: Great.

MR. POTTER: Thank you, your Honor.

THE COURT: Thank you.

THE CLERK: Court stands in recess.

(Whereupon at 3:28 p.m. further proceedings were adjourned until Monday, January 23, 2017 at 8:00 a.m.)

CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

______/s/ Debra L. Pas ______

Debra L. Pas, CSR 11916, CRR, RMR, RPR

______/s/ Belle Ball ______

Belle Ball, CSR 8785, CRR, RMR, RPR

Thursday, January 19, 2017